

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF TEXAS
 MARSHALL DIVISION

3 SOLAS OLED LTD.,) (CIVIL ACTION NO.
) (2:19-CV-152-JRG
 4 PLAINTIFF,) (
) (
 5 VS.) (
) (
 6 SAMSUNG DISPLAY CO., LTD.,) (
 SAMSUNG ELECTRONICS CO.,) (MARSHALL, TEXAS
 7 LTD., SAMSUNG ELECTRONICS) (MARCH 5, 2021
 AMERICA, INC.,) (8:23 A.M. - 5:26 P.M.
 8) (
 DEFENDANTS.) (
 9

10 TRANSCRIPT OF JURY TRIAL

11 BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

12 UNITED STATES CHIEF DISTRICT JUDGE

13
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26
27 (Proceedings recorded by mechanical stenography, transcript
28 produced on a CAT system.)
29

P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

Are the parties prepared to read into the record those items from the list of pre-admitted exhibits used during yesterday's portion of the trial?

MS. HENRY: Good morning, Your Honor. Plaintiff did not use any exhibits yesterday that had not already been entered into the record. So we do not have a list to read this morning.

THE COURT: All right. Is there something to offer from Defendants?

MR. HILL: Good morning, Your Honor. Yes. Defendants have a number of exhibits to read into the record.

DTX-1, DTX-2, 3, 110, 163, 167, 169, 327, 328, 471, 633, 669, 677, 699, 706, 710, 719, 732, 740, 749, 775, 789, 805, 989, 993, 995, 997, 998, 999, 1045, 1046, 1047, 1048, 1049, 1050, 1306, 1307, 1311, 1572, 1573, 1574, 1575, 1576, and 1577.

THE COURT: Thank you, Mr. Hill.

Is there any objection, Ms. Henry, from Plaintiff?

MS. HENRY: No objection, Your Honor.

THE COURT: Thank you, counsel.

08:26:13 1 Plaintiff -- excuse me, Defendant, who do you
08:26:15 2 intend as your next witness?

08:26:17 3 MR. LERNER: Mr. Yongseog Kim of Samsung Display.

08:26:22 4 THE COURT: And he'll be examined with the aid of
08:26:26 5 the same interpreter that we used with the last
08:26:30 6 non-English-speaking witness?

08:26:31 7 MR. LERNER: Yes, Your Honor.

08:26:31 8 THE COURT: Both the witness and the interpreter
08:26:35 9 are present and available?

08:26:35 10 MR. LERNER: They should be, yes.

08:26:36 11 MR. FENSTER: Your Honor, may I ask for leave to
08:26:38 12 be excused from the counsel table this morning?

08:26:40 13 THE COURT: Yes, Mr. Fenster, as I've previously
08:26:45 14 given leave to Mr. Haslam.

08:26:48 15 MR. FENSTER: Thank you.

08:26:50 16 THE COURT: All right. Let's bring in the jury.

08:26:52 17 COURT SECURITY OFFICER: All rise.

08:26:53 18 (Jury in.)

08:26:54 19 THE COURT: Good morning, ladies and gentlemen.

08:27:17 20 Welcome back. Please have a seat.

08:27:19 21 Defendants, call your next witness.

08:27:24 22 MR. LERNER: Your Honor, Defendants call
08:27:28 23 Mr. Yongseog Kim of Samsung Display.

08:27:31 24 THE COURT: All right. If the witness will come
08:27:32 25 forward along with the interpreter.

08:27:34 1 Ladies and gentlemen, this witness will testify
08:27:36 2 using the aid of an interpreter. As with an earlier
08:27:40 3 witness you've already seen in the trial, we're using the
08:27:43 4 same interpreter who's previously been sworn.

08:27:45 5 (Witness sworn.)

08:29:44 6 MR. LERNER: Your Honor, may we approach?

08:29:48 7 THE COURT: You may pass out the binders.

08:29:51 8 All right. Mr. Lerner, you may proceed.

08:29:54 9 MR. LERNER: Thank you, Your Honor.

08:29:54 10 YONGSEOG KIM, DEFENDANT'S WITNESS, SWORN

08:29:54 11 (INTERPRETED)

08:29:54 12 DIRECT EXAMINATION

08:29:58 13 BY MR. LERNER:

08:29:58 14 Q. Mr. Kim, will you please introduce yourself to the
08:30:02 15 jury?

08:30:03 16 A. Good morning, everyone. My name is Yongseog Kim, and I
08:30:13 17 am working at IP, or Internet Protocol, team at Samsung
08:30:17 18 Display.

08:30:17 19 Q. How long you have worked at Samsung Display?

08:30:28 20 A. Including the time that I spent at a former entity
08:30:32 21 called SDI, it has been 17 years.

08:30:35 22 THE COURT: Let me ask if the interpreter will
08:30:37 23 move the mic between you and the witness, and if you'll
08:30:40 24 speak into the mic --

08:30:41 25 THE INTERPRETER: Oh, okay, sir.

08:30:43 1 THE COURT: -- when you give the English
08:30:45 2 translation, please. Thank you.

08:30:49 3 Please ask your next witness, counsel.

08:30:52 4 MR. LERNER: Thank you, Your Honor.

08:30:55 5 Q. (By Mr. Lerner) As part of your role at Samsung
08:30:57 6 Display, have you been involved in licensing?

08:30:59 7 A. Yes.

08:31:03 8 Q. Does Samsung Display have patents of its own?

08:31:06 9 A. Yes.

08:31:10 10 Q. Has Samsung Display licensed any of its patents to
08:31:13 11 other companies?

08:31:14 12 A. Yes.

08:31:21 13 Q. Does Samsung Display respect the patents of other
08:31:24 14 companies?

08:31:26 15 A. Yes, of course.

08:31:31 16 Q. Has Samsung Display licensed any patents from other
08:31:36 17 companies that relate to OLEDs?

08:31:39 18 A. Yes.

08:31:47 19 MR. LERNER: Your Honor, we move to seal the
08:31:49 20 courtroom to move into confidential information.

08:31:52 21 THE COURT: Based on counsel's request, I'll order
08:31:54 22 the courtroom sealed and direct that anyone present who is
08:31:58 23 not subject to the protective order in this case should
08:32:00 24 excuse themselves and remain outside the courtroom until
08:32:03 25 it's reopened and unsealed.

08:32:06 1 (Courtroom sealed.)

08:32:06 2 (This portion of the transcript is sealed

08:32:06 3 and filed under separate cover as

08:32:06 4 Sealed Portion No. 20.)

09:59:46 5 (Courtroom unsealed.)

09:59:46 6 THE COURT: And having ordered the courtroom

09:59:50 7 unsealed, the ladies and gentlemen of the jury are excused

09:59:52 8 for recess.

09:59:53 9 COURT SECURITY OFFICER: All rise.

09:59:54 10 (Jury out.)

09:59:54 11 THE COURT: The Court stands in recess.

10:11:45 12 (Recess.)

10:11:50 13 (Jury out.)

10:11:50 14 COURT SECURITY OFFICER: All rise.

10:11:51 15 THE COURT: Be seated, please.

10:12:08 16 Defendants, are you prepared to call your next

10:12:15 17 witness?

10:12:16 18 MS. SMITH: We are, Your Honor.

10:12:18 19 THE COURT: All right. Let's bring in the jury,

10:12:20 20 please, Mr. Johnston.

10:12:31 21 COURT SECURITY OFFICER: All rise.

10:12:33 22 (Jury in.)

10:12:36 23 THE COURT: I said 10 minutes. It's 12 minutes.

10:12:58 24 It's pretty close.

10:12:59 25 Y'all have a seat.

10:13:01 1 Defendants, call your next witness.

10:13:03 2 MS. SMITH: Your Honor, Defendants call Mr. Chris
10:13:08 3 Martinez.

10:13:09 4 THE COURT: All right. Mr. Martinez, if you'll
10:13:12 5 come forward and be sworn by Ms. Brunson, our courtroom
10:13:18 6 deputy.

10:13:18 7 (Witness sworn.)

10:13:19 8 THE COURT: Please come around, sir. Have a seat
10:13:28 9 at the witness stand.

10:13:30 10 MS. SMITH: Your Honor, may I approach and pass
10:13:31 11 out some binders?

10:13:32 12 THE COURT: Yes.

10:13:33 13 MS. SMITH: Thank you.

10:13:58 14 THE COURT: Ms. Smith, you may proceed with your
10:14:00 15 direct examination.

10:14:02 16 MS. SMITH: May it please the Court.

10:14:02 17 CHRISTOPHER MARTINEZ, DEFENDANTS' WITNESS, SWORN

10:14:02 18 DIRECT EXAMINATION

10:14:03 19 BY MS. SMITH:

10:14:03 20 Q. Good morning, Mr. Martinez.

10:14:05 21 A. Good morning.

10:14:06 22 Q. If you would, introduce yourself to the Court and the
10:14:09 23 jurors, please.

10:14:11 24 A. Certainly. My name is Christopher Martinez. I am an
10:14:16 25 Austin resident. I've been in Texas for 21 years in that

10:14:19 1 area. I am a partner with the StoneTurn Group.

10:14:24 2 Q. And you say you're a partner at the StoneTurn Group.

10:14:27 3 What does the StoneTurn Group do?

10:14:28 4 A. So we are a sort of financial and economic consulting
10:14:35 5 company. We help, and in particular, I help companies
10:14:39 6 value their intellectual property, including their patents,
10:14:42 7 as well as deal with licensing and, obviously, do the work
10:14:46 8 that you've seen me do here today as an expert witness.

10:14:51 9 MS. SMITH: Mr. Beall, if I could have you queue
10:14:54 10 up the slide deck, please. Thank you, sir.

10:14:57 11 Q. (By Ms. Smith) Mr. Martinez, can you tell the jury a
10:15:00 12 little bit about your educational background?

10:15:01 13 A. Certainly. I have a degree in quantitative economics
10:15:06 14 from Stanford University. I also have a Master's of
10:15:09 15 business administration with a concentration in finance and
10:15:14 16 accounting from UCLA.

10:15:16 17 Q. And do you also have any certifications that might be
10:15:20 18 relevant to your work that you've done here, to tell to the
10:15:21 19 jury today?

10:15:21 20 A. Yes, I do. I'm a certified public accountant, but
10:15:26 21 please don't ask me any tax questions there. I'm a
10:15:29 22 certified licensing professional. I'm also a certified
10:15:32 23 patent valuation analyst.

10:15:33 24 Q. Now, Mr. Martinez, when Plaintiff's counsel was
10:15:37 25 visiting with Mr. Dell, we saw a picture of a hypothetical

10:15:41 1 negotiation table. Do you remember that?

10:15:41 2 A. I do, yes.

10:15:42 3 Q. Have you actually been at that table in real life?

10:15:46 4 A. Yes, I have.

10:15:47 5 Q. And when -- how did you find yourself at that table?

10:15:50 6 A. So before I founded the StoneTurn Group about 14 -- or
10:15:54 7 17 years ago now, I was vice president and executive
10:15:59 8 director of SBC Knowledge Ventures.

10:16:02 9 SBC, as some of you might know, is the phone
10:16:05 10 company, Southwestern Bell. They've now changed their name
10:16:10 11 to AT&T. But in the capacity as the vice president of that
10:16:14 12 entity, I was responsible for negotiating licenses both to
10:16:20 13 acquire rights to patents for the enterprise as well as to
10:16:24 14 license out SBC's patents to other entities.

10:16:29 15 Q. You do a lot of deals at that table?

10:16:32 16 A. I do dozens of deals, yes.

10:16:34 17 Q. And when a deal was made at a table, who signed on the
10:16:38 18 line executing the license?

10:16:39 19 A. Yeah, I was always looking for someone else to sign,
10:16:42 20 but it was my responsibility to sign, which meant I had to
10:16:46 21 then take it up to my boss and explain why I entered into
10:16:49 22 that type of agreement.

10:16:50 23 Q. Mr. Martinez, are you being compensated for your time
10:16:53 24 in this case?

10:16:54 25 A. Yes, I am.

10:16:54 1 Q. And what's your hourly rate?

10:16:56 2 A. 675.

10:16:58 3 Q. Is that compensation, that 675, dependent in any way on
10:17:01 4 the outcome of this case?

10:17:02 5 A. No, it's not.

10:17:03 6 Q. You've testified before as an expert in trials?

10:17:06 7 A. Yes, I've testified in about a dozen trials.

10:17:10 8 MS. SMITH: Your Honor, Defendants respectfully
10:17:14 9 offer Mr. Martinez as an expert on damages in this case.

10:17:16 10 THE COURT: Is there objection?

10:17:18 11 MR. WARD: No objection.

10:17:19 12 THE COURT: Without objection, the Court will
10:17:20 13 recognize this witness as an expert in the designated
10:17:23 14 field.

10:17:23 15 Please proceed.

10:17:24 16 MS. SMITH: Thank you, Your Honor.

10:17:25 17 Q. (By Ms. Smith) Under what circumstances should the
10:17:30 18 jury even be thinking about the issue of damages in this
10:17:32 19 case?

10:17:33 20 A. So as is illustrated by this slide, I mean, if there's
10:17:37 21 no infringement, if the jury decides there's no
10:17:41 22 infringement, then there's no damages. And you can
10:17:43 23 completely disregard what I say, like my family typically
10:17:47 24 does. And, again, if there's -- if the patents are found
10:17:51 25 invalid, there, again, are no damages.

10:17:53 1 Q. Now, that being said, when you undertook your work in
10:17:56 2 this case, did you have to make some assumption?

10:17:59 3 A. Yes, as a damages expert, I do make the assumption for
10:18:03 4 purposes of my analysis that the patents are infringed and
10:18:05 5 are valid.

10:18:06 6 Q. What kind of information, if you could step through
10:18:08 7 some of the information that you considered in formulating
10:18:12 8 your reasonable royalty opinions in this case?

10:18:13 9 A. So, very broadly, I considered all the information in
10:18:19 10 the record of this case that pertained to financial or
10:18:22 11 damages or license royalties or licensing information.

10:18:29 12 I looked at deposition testimony of various
10:18:32 13 witnesses. I looked at the law, the same piece of law that
10:18:42 14 Mr. Dell looked at. I also looked at the caselaw,
10:18:46 15 Georgia-Pacific factors, and the Georgia-Pacific case in
10:18:49 16 the same way that Mr. Dell did. Obviously, I interpreted
10:18:55 17 them through the lens of my experience and education.

10:18:58 18 Q. I see at the bottom it says, independent research.
10:19:01 19 Does that mean you didn't only rely upon what the lawyers
10:19:04 20 gave you in this case?

10:19:05 21 A. I looked at -- I tried to place everything in context,
10:19:09 22 ultimately in my experience, making sure we have context --
10:19:11 23 context helps me determine if I'm doing something
10:19:14 24 reasonable. If you do something only in a vacuum,
10:19:18 25 sometimes you don't get the results that are reasonable.

10:19:21 1 Q. Now, Mr. Martinez, you were in the courtroom when

10:19:24 2 Mr. Dell testified, correct?

10:19:24 3 A. I was, yes.

10:19:26 4 Q. Do you agree with his overall royalty analysis?

10:19:29 5 A. I do not, no.

10:19:30 6 Q. At a high level -- let's start at a high level, what do

10:19:33 7 you see as the main problems with Mr. Dell's analysis?

10:19:37 8 A. At a high level, Mr. Dell disregards or ignores the

10:19:43 9 real-world, observable, objective indicators of value of

10:19:49 10 the patents-in-suit. And in so doing and in constructing

10:19:52 11 his hypothetical negotiation, he ignores the real-world

10:19:56 12 relationships between the hypothetical licensor --

10:20:01 13 licensors and the hypothetical licensee here.

10:20:03 14 Q. Can you -- you mentioned real world twice. Can you

10:20:07 15 elaborate a little bit on that for the jurors?

10:20:10 16 A. Sure. I guess I look at everything through this sort

10:20:13 17 of real-world context. Even though this is a hypothetical

10:20:16 18 negotiation --

10:20:16 19 THE COURT: Mr. Martinez, would you slow down a

10:20:19 20 little bit, please?

10:20:21 21 THE WITNESS: Certainly.

10:20:22 22 THE COURT: Thank you.

10:20:26 23 A. Even though it's a hypothetical negotiation, you've got

10:20:28 24 to apply real facts, right? You don't come up with new

10:20:31 25 facts. You just have to apply them in this hypothetical

10:20:35 1 scenario. So it's also important that you look for
10:20:38 2 real-world indicators of value.

10:20:40 3 And, as we know, real transactions that took place
10:20:43 4 create indicators of value. If you sold your F150 for
10:20:47 5 \$4,000 used, that's the value of it. There's no disputing
10:20:51 6 that.

10:20:51 7 So it's just important to look for those
10:20:53 8 real-world indicators.

10:20:57 9 Q. (By Ms. Smith) Do you think that Dell's -- Mr. Dell's
10:20:59 10 opinion is reasonable?

10:21:00 11 A. I do not, no.

10:21:02 12 Q. And do you agree with his -- his opinion as to what the
10:21:07 13 smallest salable patent practicing unit is?

10:21:09 14 A. No, I do not.

10:21:12 15 Q. And what's your opinion about that -- can I call it the
10:21:16 16 SSPPU for short?

10:21:19 17 A. Sure. I'll try not to stumble on that, but, yes.

10:21:24 18 Q. Thank you, sir.

10:21:25 19 A. I believe that Mr. Dell is using the wrong SSPPU. The
10:21:28 20 SSPPU for the '311 patent should be the touch sensor panel.
10:21:34 21 The SSPPU for the '450 and the '338 patents should be
10:21:41 22 the -- the OLED panel and not the entire display panel.

10:21:45 23 Q. Now, instead of going down Mr. Dell's path, what did
10:21:50 24 you do to determine a reasonable royalty in this case?

10:21:53 25 A. I, again, looked at the real world. I tried to look

10:21:59 1 for real indicators of value, indicators that are objective
10:22:03 2 that don't require an expert to sort of figure out, right,
10:22:09 3 the indicators that sort of -- the average person could
10:22:13 4 say, gosh, this makes sense. Something changed hands, and
10:22:17 5 this is how much money changed hands in exchange for it.

10:22:21 6 So I tried to look at the real world as much as
10:22:23 7 possible.

10:22:23 8 Q. Did you use the same Georgia-Pacific case analysis that
10:22:29 9 Mr. Dell used in his analysis?

10:22:31 10 A. Yes, I did. I looked at and considered all 15 of the
10:22:36 11 factors. I wrote a very lengthy report on them, as well.

10:22:40 12 Q. Now, before we dive deeper into that lengthy report
10:22:43 13 that you mentioned, can you give the jury a preview of what
10:22:47 14 your ultimate conclusions were after going through each of
10:22:49 15 those 15 Georgia-Pacific factors?

10:22:51 16 A. Yes. Related to the '450 and the '338 patents, we'll
10:22:59 17 call them the Casio patents, it's my opinion that a
10:23:04 18 reasonable royalty would be a lump sum royalty of no more
10:23:07 19 than \$1.15 million.

10:23:11 20 And then related to the '311 patent, the Atmel
10:23:14 21 patent, it's my opinion that a reasonable royalty would be
10:23:19 22 a lump sum of no more than \$500,000.

10:23:24 23 Q. And, Mr. Martinez, I heard you mention, and we see up
10:23:27 24 on the screen, the words "lump sum" in two different
10:23:31 25 places. Can you explain to the jury what you mean by lump

10:23:34 1 sum reasonable royalty?

10:23:35 2 A. Sure. A lump sum royalty is just like it sounds. You
10:23:40 3 pay a fixed amount and you get rights for a fixed term. In
10:23:46 4 this case, it would be for the term of the patents for as
10:23:49 5 long as the patents are valid. So you pay a fixed amount,
10:23:53 6 and you get rights until that patent expires.

10:23:56 7 Q. Mr. Martinez, I'm going to direct your attention now to
10:23:58 8 what we're calling the Casio patents. Which patents are we
10:24:01 9 talking about when we're talking about the Casio patents?

10:24:03 10 A. Again, that's the '450 and the '338 patents.

10:24:05 11 Q. When would the hypothetical negotiation for the Casio
10:24:10 12 patents have taken place?

10:24:11 13 A. That hypothetical negotiation would have taken place in
10:24:16 14 May of 2013.

10:24:17 15 Q. And looking at the screen, who is -- who do we see at
10:24:21 16 the table at that negotiation?

10:24:22 17 A. So at that negotiation would be Casio, the owner --
10:24:27 18 assignee of those patents at that point in time, as well as
10:24:32 19 Samsung Display as the licensee.

10:24:33 20 Q. Now, you were here just now for Mr. Kim's testimony; is
10:24:37 21 that correct?

10:24:37 22 A. I was, yes.

10:24:38 23 Q. And you heard Mr. Ward talked to Mr. Kim about big
10:24:42 24 companies and small companies and how Samsung deals with
10:24:45 25 each. Did you hear that testimony?

10:24:46 1 A. I did, yes.

10:24:47 2 Q. Who's at the -- who's at this table, big companies or
10:24:52 3 small companies?

10:24:52 4 A. These are both objectively large companies, yes.

10:24:56 5 Q. And so what should the jury be considering in
10:24:59 6 considering the hypothetical negotiation about the size of
10:25:01 7 the companies at the table?

10:25:02 8 A. Well, I think you just -- you have to put yourself in
10:25:08 9 the position that these are two large companies, two
10:25:11 10 sophisticated technology companies that would be at this
10:25:13 11 negotiating table.

10:25:13 12 Q. And does Mr. Dell actually agree with you on that
10:25:17 13 point?

10:25:17 14 A. He does.

10:25:17 15 Q. Were you also in the courtroom when Mr. Padian
10:25:21 16 testified?

10:25:22 17 A. I was, yes.

10:25:23 18 Q. Now, I believe we heard some testimony that -- from
10:25:29 19 Mr. Padian -- Padian, excuse me, and I'll quote: We don't
10:25:33 20 believe Casio really knew the amount of infringement that
10:25:36 21 was out there or the value of the patents they had.

10:25:38 22 Did you hear that testimony?

10:25:40 23 A. Yes, I did.

10:25:41 24 Q. Well, how does that testimony from Mr. Padian fit in at
10:25:45 25 this hypothetical negotiation table?

10:25:47 1 A. Well, honestly, it's irrelevant what Solas thought.

10:25:53 2 Solas, in May of 2013, hadn't been formed and wouldn't be

10:25:58 3 formed for about three years. And they wouldn't have been

10:26:00 4 a factor at this negotiation, even if they did exist.

10:26:05 5 Because the law sets this up that it's going to be Casio

10:26:10 6 and Samsung Display. And there's no dispute about that

10:26:12 7 between Mr. Dell and I.

10:26:13 8 Q. Little bit later in Mr. Padian's testimony, I believe

10:26:18 9 we heard him call Casio a sophisticated electronics company

10:26:23 10 and an innovator in the OLED space. Did you hear that

10:26:26 11 testimony?

10:26:27 12 A. I did, yes.

10:26:28 13 Q. How on earth does that mesh with the other testimony

10:26:35 14 that we just heard about them not knowing what they had?

10:26:37 15 A. Yeah, the two don't seem to be consistent.

10:26:42 16 Q. You ever heard the phrase "talking out of both sides of

10:26:47 17 your mouth"?

10:26:47 18 A. Yes, I have.

10:26:48 19 Q. Mr. Martinez, what can you tell the jury about the

10:26:52 20 relationship between -- between the hypothetical licensor,

10:26:56 21 Casio, that we see here on the left, and the hypothetical

10:26:59 22 licensee, Samsung Display?

10:27:01 23 A. So the two were -- they knew each other. They were --

10:27:08 24 they had -- they were not competitors. Actually, Samsung

10:27:12 25 Display had supplied displays for Casio products. I think

10:27:17 1 it was Mr. Kwak that testified over a million units in the
10:27:22 2 2010/2011 time frame.

10:27:24 3 And Casio and Samsung had also entered into a
10:27:29 4 number of intellectual property licensing agreements or
10:27:32 5 assignment agreements that related to patents. So these
10:27:35 6 two parties knew each other, and they were effectively
10:27:39 7 business partners in the market.

10:27:41 8 Q. Thank you, sir.

10:27:42 9 MS. SMITH: Your Honor, I believe I'm about to go
10:27:44 10 into some licensing information that's confidential, if I
10:27:48 11 can have leave to seal the courtroom, please.

10:27:49 12 THE COURT: Based on counsel's request and the
10:27:52 13 representations made, I'm going to order the courtroom
10:27:54 14 sealed.

10:27:55 15 I'm going to direct, pursuant thereto, that those
10:27:59 16 present not subject to the protective order in this case
10:28:01 17 excuse themselves and remain outside the courtroom until it
10:28:06 18 is reopened and unsealed.

10:28:07 19 (Courtroom sealed.)

10:28:07 20 (This portion of the transcript is sealed
10:28:07 21 and filed under separate cover as
10:28:14 22 Sealed Portion No. 21.)

10:46:54 23 (Courtroom unsealed.)

10:46:55 24 THE COURT: If you'll hand the binder to the Court
10:46:57 25 Security Officer, he'll deliver it to the witness.

10:47:04 1 Once you've delivered it to the witness,
10:47:06 2 Mr. Johnston, if you'll make sure the backdoors are opened
10:47:10 3 and the public knows they may return.

10:47:13 4 All right. Counsel, you may proceed with
10:47:48 5 cross-examination.

10:47:49 6 MR. WARD: Thank you, Your Honor.

10:47:49 7 CROSS-EXAMINATION

10:47:49 8 BY MR. WARD:

10:47:49 9 Q. Good morning, Mr. Martinez.

10:47:51 10 A. Good morning, Mr. Ward.

10:47:53 11 Q. You and I have met before, have we not?

10:47:55 12 A. We have.

10:47:55 13 Q. And I was trying to think back, was the last time we
10:47:59 14 saw each other about three and a half years ago in this
10:48:01 15 courtroom?

10:48:01 16 A. Might have been, yes.

10:48:03 17 Q. All right. We can at least agree on what the law is
10:48:06 18 that applies in this case for damages?

10:48:11 19 A. Well, I'm not a lawyer, so I feel a little bit
10:48:15 20 disadvantaged by that. So I know what my understanding of
10:48:18 21 my obligations are under the caselaw, at least I think I
10:48:22 22 do.

10:48:22 23 MR. WARD: Could we see the patent damages
10:48:25 24 statute, Mr. Wietholter?

10:48:29 25 Q. (By Mr. Ward) Let's focus on that top paragraph.

10:48:36 1 You were here for opening statements, weren't you?

10:48:38 2 A. I was, yes.

10:48:39 3 Q. And you agree that the jury has to decide what amount

10:48:43 4 to award, if any, the claimant damages adequate to

10:48:48 5 compensate for the infringement, but in no event less than

10:48:51 6 a reasonable royalty for the use made of the invention by

10:48:53 7 the infringer. Correct?

10:48:54 8 A. Correct.

10:48:55 9 Q. And you emphasized reasonable. It's got to be

10:48:59 10 reasonable, correct?

10:49:00 11 A. Yes.

10:49:01 12 Q. But it's also got to be based upon the use made of the

10:49:05 13 invention by the infringer, correct?

10:49:06 14 A. Absolutely, that's Georgia-Pacific Factor 11.

10:49:09 15 Q. And in all the slides we just saw you walk through,

10:49:12 16 there wasn't a single citation to the number of infringing

10:49:15 17 units that have been sold by Samsung, correct?

10:49:18 18 A. That's correct.

10:49:19 19 Q. And you've got to assume infringement, correct?

10:49:22 20 A. I do, yes.

10:49:23 21 Q. And you've got to make sure that the royalty is

10:49:27 22 reasonable for the use made of the invention, correct?

10:49:30 23 A. Yes, I do.

10:49:32 24 Q. You didn't count units, and you didn't look at total

10:49:35 25 revenue in any of the slides you just presented to the

10:49:38 1 jury, did you?

10:49:39 2 A. That's correct.

10:49:39 3 Q. But you're telling them that you arrived at a

10:49:45 4 reasonable royalty based upon the use by Samsung of the

10:49:48 5 invention?

10:49:49 6 A. Yes.

10:49:49 7 Q. And you talked about real world, and you've got to be

10:49:54 8 objective, right?

10:49:55 9 A. Yes.

10:49:55 10 Q. As an expert in this case, you're objective, correct?

10:49:59 11 A. Yes.

10:50:01 12 Q. Let the chips fall where they may. You'll follow the

10:50:05 13 evidence. Doesn't matter who you're working for, the

10:50:08 14 answer is the answer. Correct?

10:50:09 15 A. Yes.

10:50:10 16 Q. And that's what you did in this case?

10:50:11 17 A. I looked at the record, and I formulated my opinion

10:50:15 18 based on the record.

10:50:16 19 Q. But unlike anything in the real world -- and you told

10:50:22 20 us you had been at negotiations, correct?

10:50:24 21 A. Correct.

10:50:24 22 Q. Did you ever have someone sitting across the table from

10:50:29 23 you ask for a written admission from -- was it Southwestern

10:50:33 24 Bell that you were working for?

10:50:34 25 A. SBC.

10:50:35 1 Q. SBC. Did they say, Mr. Martinez, will you put in
10:50:39 2 writing that you infringe our patents and that they're all
10:50:42 3 valid?

10:50:43 4 A. Did anyone ever ask me that?

10:50:45 5 Q. Yes, sir.

10:50:45 6 A. No, they didn't.

10:50:46 7 Q. Would you have done that if you were negotiating on
10:50:48 8 behalf of SBC?

10:50:50 9 A. It really depends on the context. I mean, if I had
10:50:53 10 factual basis that my company was, in fact, using the
10:50:56 11 technology, I don't think there's any problem asserting to
10:51:01 12 that.

10:51:01 13 Q. Well, tell the jury how many times in those real-world
10:51:04 14 negotiations you wrote down on a piece of paper, we
10:51:07 15 infringe your patents that you're asserting, and they're
10:51:10 16 valid, and slid it across the table and said, you can use
10:51:13 17 it against me?

10:51:13 18 A. That doesn't happen in the real world, and I don't
10:51:16 19 think I ever did that. But I think I would still -- I have
10:51:20 20 my integrity to think about. And, you know, if my
10:51:24 21 technical people told me that we were using the technology,
10:51:28 22 we would negotiate with that understanding.

10:51:29 23 Q. But you'd negotiate; you wouldn't make that admission,
10:51:33 24 correct?

10:51:33 25 A. I mean, I can't imagine wanting to make that admission,

10:51:38 1 I give you that. But, you know, I think you have to go
10:51:41 2 into negotiations in an honest and straightforward way.
10:51:47 3 Q. But in this courtroom, you have to assume that Samsung
10:51:52 4 Display, Samsung, and Samsung Electronics of America admit
10:51:56 5 that they infringe valid patents to do your analysis, don't
10:51:56 6 you?
10:52:00 7 A. Yeah, I have to make the assumption, as every damages
10:52:04 8 expert does in every one of these patent cases. You have
10:52:08 9 to assume that the patents are infringed.
10:52:09 10 Q. And that's a fundamental assumption, isn't it?
10:52:13 11 A. Yeah, it's one of the things we have to start with,
10:52:19 12 yes.
10:52:19 13 THE COURT: Let's both of you try to slow down,
10:52:22 14 please.
10:52:22 15 Q. (By Mr. Ward) One of the big areas of disagreement
10:52:24 16 between you and Mr. Dell is he says, apply a running
10:52:27 17 royalty, and you say, no, apply a lump sum, correct?
10:52:30 18 A. Correct.
10:52:36 19 Q. And you're telling the jury that you arrived at the
10:52:39 20 lump sum for the '450 and the '338 of 1.15 million,
10:52:44 21 correct?
10:52:44 22 A. A lump sum of no more than 1.15 million, yes.
10:52:49 23 Q. No more than. And that happens to be exactly what
10:52:52 24 Solas paid, correct?
10:52:53 25 A. Well, again, it's what Solas paid for 724 -- 725

10:52:58 1 patents. So on a per-patent basis, on average, that's
10:53:01 2 about \$1,600.00 per patent.

10:53:03 3 Q. Okay. So you're right, it's for all the patents. And
10:53:08 4 so you -- you're telling the jury that you sat down, you
10:53:12 5 did this analysis. It took you months, right?

10:53:15 6 A. Yes.

10:53:15 7 Q. You went through all the documents, you went through
10:53:18 8 all the depositions, you considered all the evidence,
10:53:22 9 right?

10:53:22 10 A. Yeah, I tried to, yes.

10:53:24 11 Q. And just based upon your independent review of all that
10:53:28 12 evidence, the amount of damages you came up to was exactly
10:53:33 13 equal to what they paid for all these patents?

10:53:36 14 A. Well, that's not a fair characterization of what I did.

10:53:40 15 Q. Well, it does happen to equal exactly what they paid
10:53:43 16 for the patents, correct?

10:53:44 17 A. Well, again, they paid 1.15 million for 724 patents.

10:53:51 18 So on average, they paid \$1,600.00 per patent. So what I
10:53:55 19 did was I looked at all the Georgia-Pacific factors, as I'm
10:54:00 20 required to do, and I have a lengthy analysis about it, and
10:54:03 21 I looked at the assumptions I have to make about
10:54:06 22 infringement and validity, which tend to have upward
10:54:09 23 influences, and I looked at the other factors, including
10:54:11 24 the other patents that are required to make the products.

10:54:16 25 And so I looked at all of that, and that's what I

10:54:20 1 did. And I came to an opinion that I've already stated.

10:54:23 2 Q. And so are you telling the jury that it's just a

10:54:26 3 coincidence that that number, 1.15 million, just happened

10:54:30 4 to be what Solas paid for this patent portfolio?

10:54:32 5 A. No, I'm not -- it's not a coincidence. Obviously I

10:54:37 6 used that number, the \$1.15 million number, because it's a

10:54:41 7 ceiling, right, it's an absolute ceiling. They paid on

10:54:45 8 average \$1,600.00 for these two patents, so they spent

10:54:49 9 \$3,200 on average for these two patents.

10:54:51 10 To get a return of the entire payment they paid

10:54:55 11 for all of them is an exceptional return on their

10:54:58 12 investment, and I've considered that.

10:55:00 13 MR. WARD: Your Honor, I object to everything

10:55:02 14 after, no, it was not a coincidence, as non-responsive.

10:55:08 15 THE COURT: Sustained.

10:55:08 16 You need to limit your answers to the questions

10:55:11 17 asked, Mr. Martinez.

10:55:12 18 THE WITNESS: Yes.

10:55:13 19 THE COURT: Ms. Smith is going to get a chance to

10:55:15 20 ask you more questions, as you well understand. So limit

10:55:18 21 your answers to the questions asked during

10:55:20 22 cross-examination.

10:55:21 23 Let's continue.

10:55:22 24 Q. (By Mr. Ward) And so did you just say that the

10:55:25 25 purchase price was an absolute ceiling for the damages in

10:55:29 1 this case? Is that what you just said, Mr. Martinez?

10:55:32 2 A. I did just say that, yes.

10:55:35 3 Q. So that absolute ceiling would also apply, in your
10:55:41 4 opinion, to your damages analysis of the '311 patent,
10:55:45 5 correct?

10:55:45 6 A. Yeah, my logic is consistent between the two sets of
10:55:50 7 patents.

10:55:50 8 Q. You applied the purchase price as a ceiling for damages
10:55:55 9 for both the '450 and the '338 and the '311, correct?

10:56:04 10 A. No.

10:56:05 11 Q. Now, is it correct that you work for Plaintiffs and
10:56:11 12 Defendants about 50 percent -- 50/50?

10:56:14 13 A. Yeah, approximately, yes.

10:56:15 14 Q. And you apply the same approach regardless of who
10:56:21 15 you're working for, correct?

10:56:22 16 A. Yes. I look at the facts consistent with the
10:56:25 17 particular circumstances of each case, and I apply the
10:56:29 18 Georgia-Pacific factor, as well as this 35 U.S.C. 284 code.

10:56:35 19 Q. And I think you said you've testified about a dozen
10:56:38 20 times?

10:56:39 21 A. Approximately, yes.

10:56:40 22 Q. And isn't it true that you've testified that, generally
10:56:46 23 speaking, a lump sum is more efficient; both parties know
10:56:51 24 the certainty at the outset of the arrangement exactly what
10:56:53 25 the license fee is? Does that sound familiar?

10:56:59 1 A. It wouldn't surprise me if I said that, because that's
10:57:03 2 true.

10:57:03 3 Q. And you were working for a Defendant in a case called
10:57:06 4 LifeNet Health versus Lifecell Corporation. Do you
10:57:10 5 remember that?

10:57:10 6 A. Barely. I know I worked on that case, but I don't --
10:57:13 7 yeah.

10:57:13 8 Q. Okay. But that's -- sounds like something you'd say?

10:57:16 9 A. Yeah, I believe that. I believe that they're -- you
10:57:17 10 just stated one of the benefits of a lump sum.

10:57:19 11 Q. And you -- you believe, generally speaking, a lump sum
10:57:22 12 is more efficient, correct?

10:57:24 13 A. It depends on the facts and circumstances, but, yes, a
10:57:30 14 lump sum does not require a lot of the other monitoring
10:57:33 15 that a running royalty requires.

10:57:34 16 Q. If you would -- I want you to refresh your
10:57:38 17 recollection. If you'd look in your binder there, there's
10:57:40 18 a transcript from the LifeNet Health versus LifeCell
10:57:45 19 Corporation, and you can go to Page 1419, Lines 19 through
10:57:50 20 20. And then I'll ask you that question again.

10:57:51 21 A. I'm sorry, could you repeat the page?

10:57:54 22 Q. Sure. 1419, 1-4-1-9.

10:58:00 23 THE COURT: And, Mr. Ward, there's no need to
10:58:02 24 specify the parties in that prior litigation. Just say the
10:58:05 25 prior lawsuit.

10:58:06 1 MR. WARD: Okay.

10:58:08 2 Q. (By Mr. Ward) The prior lawsuit.

10:58:09 3 A. Okay. 1419?

10:58:11 4 Q. Yes, sir.

10:58:15 5 A. I'm sorry, which lines did you want me to look at?

10:58:19 6 Q. You can look at the question and then the answer. Your
10:58:22 7 answer goes on for a couple of pages, but I was focused on
10:58:25 8 19 to 20 -- I'm sorry, 19 to 21. But we can read anything
10:58:31 9 you want to read, if you want to put it in context.

10:58:34 10 A. Okay.

10:58:35 11 Q. Does that refresh your recollection?

10:58:38 12 A. I'm sorry, I just haven't -- I barely got through the
10:58:41 13 question.

10:58:42 14 Q. I'm sorry.

10:58:53 15 A. Yes, it does.

10:58:54 16 Q. And then if you go on to the next page, you described
10:58:58 17 it as very eloquent in its simplicity, talking about the
10:59:06 18 lump sum, correct?

10:59:07 19 A. Yes.

10:59:08 20 Q. Generally speaking, it's much easier. There's no
10:59:12 21 monitoring that has to go on during the course of the
10:59:14 22 arrangement. It's very eloquent. Correct?

10:59:17 23 A. Yes.

10:59:17 24 Q. And you're speaking about the lump sum approach there,
10:59:20 25 correct?

10:59:20 1 A. Yes, I am.

10:59:21 2 Q. And you were working for the Defendant in that case,
10:59:25 3 correct?

10:59:25 4 A. Yes, I was.

10:59:25 5 Q. Now, when we met three and a half years ago in this
10:59:33 6 courtroom, you were working for the Plaintiff, correct?

10:59:35 7 A. That's correct.

10:59:35 8 Q. And, actually, my partner, Wes Hill, was the one who
10:59:41 9 questioned you during that case, correct?

10:59:43 10 A. Yeah, we were working together with your firm, yes.

10:59:45 11 Q. You were working together. Did you get a chance to
10:59:49 12 review the Elbit transcript before you came to testify
10:59:52 13 today?

10:59:52 14 A. I did not, no.

10:59:53 15 Q. Do you recall testifying that the use of a running
11:00:07 16 royalty --

11:00:07 17 MS. SMITH: Objection, Your Honor. This is an
11:00:09 18 improper use of a prior legal proceeding, it violates a
11:00:13 19 MIL, and he's not using it as impeachment.

11:00:16 20 THE COURT: What's your response, Mr. Ward?

11:00:17 21 MR. WARD: Your Honor, the MIL reaches litigation
11:00:19 22 involving the parties. This is a prior statement by this
11:00:23 23 witness that is directly inconsistent with what he's
11:00:26 24 testified to, and I just want to ask him about it.

11:00:28 25 THE COURT: Well, it is in the nature of

11:00:33 1 impeachment as a prior inconsistent statement, or I assume
11:00:38 2 it will be.

11:00:39 3 You can continue, Mr. Ward. There's no need to
11:00:45 4 specify the prior lawsuit from which it came. Just make it
11:00:49 5 clear to the jury that an earlier time while under oath
11:00:53 6 this was a statement that this witness made.

11:00:55 7 MS. SMITH: Thank you, Your Honor.

11:00:55 8 THE COURT: It's a direct impeachment as an
11:00:59 9 inconsistent statement in that context, and there's no need
11:01:01 10 to be more specific.

11:01:02 11 MR. WARD: Okay.

11:01:02 12 THE COURT: The objection is overruled.

11:01:04 13 Q. (By Mr. Ward) And, Mr. Martinez, if you want to
11:01:09 14 refresh your recollection, I know it's been a little while.
11:01:13 15 You can go to Page 72 of that transcript and read Lines 8
11:01:17 16 to 21.

11:01:49 17 A. Yeah, I've read Line 21. I'm sorry.

11:01:52 18 Q. Okay. And so am I correct that you previously
11:01:55 19 testified that when using the unit rate -- and that's
11:01:59 20 running royalty, correct?

11:02:00 21 A. Yes, a unit rate is a running -- form of running
11:02:03 22 royalty.

11:02:03 23 Q. That's sort of the eloquence of a unit rate, correct?
11:02:13 24 Line 13?

11:02:14 25 A. Oh, I'm sorry, I was reading the wrong line then. I

11:02:18 1 thought you were looking at Line 21. Yes, that's right.

11:02:22 2 Q. You sort of pay as you go, you don't pay for units you
11:02:26 3 don't sell, and you just pay for the units you do sell,
11:02:30 4 right?

11:02:30 5 A. Yes, in this context, yes, this is appropriate, yes.

11:02:34 6 Q. And you said, so if a company is wildly successful and
11:02:37 7 sells 5 million units or 3.7 million units, typically
11:02:42 8 they're not averse to paying their fair share to the
11:02:47 9 technology owners. So what I'm using is the unit rate.
11:02:49 10 I'm not really comparing it to the overall payments on this
11:02:56 11 agreement.

11:02:56 12 Is that what you said?

11:02:57 13 A. Yes, that's what you said.

11:02:59 14 Q. So is it fair to summarize that testimony that when you
11:03:07 15 testified for the Defendant, the lump sum was the eloquent
11:03:12 16 approach, and then when you testified for the Plaintiff,
11:03:14 17 the running royalty was the eloquent approach? Fair?

11:03:18 18 A. Well, yes, I used those words, but your
11:03:21 19 characterization is not fair.

11:03:22 20 Q. Now, in your report --

11:03:29 21 MR. WARD: You can take that down, Mr. Wietholter.

11:03:31 22 Q. (By Mr. Ward) In your report, you actually summarized
11:03:34 23 some of the advantages that you found that were associated
11:03:36 24 with a lump sum, correct?

11:03:38 25 A. Yes.

11:03:41 1 MR. WARD: And if we could see Paragraph 206 --

11:03:52 2 Q. (By Mr. Ward) And we don't have to read through all of

11:03:55 3 this, but these are some of the advantages of a lump-sum

11:03:59 4 royalty that you explained in your report, correct?

11:04:00 5 A. I assume so. Looks like my report. But I don't have

11:04:04 6 my report in front of me.

11:04:07 7 Q. I'll give you one. Hold on.

11:04:10 8 MR. WARD: May I approach, Your Honor?

11:04:11 9 THE COURT: You may.

11:04:14 10 THE WITNESS: Thank you.

11:04:23 11 MS. SMITH: Your Honor, that's hearsay. He's not

11:04:25 12 using it for impeachment, and the report is not an exhibit.

11:04:29 13 I believe previously in this case you made a similar ruling

11:04:33 14 when Mr. Haslam was trying to use the report with his

11:04:36 15 witness.

11:04:36 16 MR. WARD: Your Honor, I'm just familiarizing

11:04:38 17 himself with this report.

11:04:39 18 THE COURT: I haven't seen how it's going to be

11:04:41 19 used. You may reurge your objection when we see more of

11:04:44 20 what's actually going to be offered. But at this point,

11:04:47 21 it's premature.

11:04:48 22 MS. SMITH: Thank you, Your Honor.

11:04:49 23 Q. (By Mr. Ward) And so you laid out some of the

11:04:53 24 advantages of a lump sum royalty in your report, correct?

11:04:55 25 A. Correct.

11:04:56 1 Q. And the citation there is at Footnote 357.

11:05:00 2 MR. WARD: Could you pull up Footnote 357?

11:05:04 3 Q. (By Mr. Ward) And I don't know how you pronounce this
11:05:08 4 last name. Is it Razgaitis?

11:05:13 5 A. That's a good try. I think. That's the way I'd try.

11:05:14 6 Q. Close enough. Is that a book you're familiar with?

11:05:17 7 A. Yes, this is an older edition, but, yes, I'm familiar
11:05:21 8 with it.

11:05:21 9 Q. It's reliable?

11:05:23 10 A. Generally speaking, it talks about patent licensing and
11:05:26 11 whatnot.

11:05:27 12 Q. I wouldn't assume you'd cite something in your report
11:05:30 13 that you found to be unreliable?

11:05:32 14 A. Yeah, this particular passage, yes, I found reliable.

11:05:35 15 Q. There's other passages in that book, though, too,
11:05:39 16 aren't there?

11:05:39 17 A. There are.

11:05:40 18 MR. WARD: Mr. Wietholter, would you pull up the
11:05:42 19 cover of that book.

11:05:44 20 Q. (By Mr. Ward) That look about like the book we're
11:05:46 21 talking about Valuation and Dealmaking of Technology-Based
11:05:54 22 Intellectual Property?

11:05:54 23 A. That's the title of the book. I don't recall the
11:05:56 24 cover, but yes.

11:05:56 25 Q. Okay.

11:05:57 1 MR. WARD: Let's jump ahead, Mr. Wietholter.

11:06:07 2 Q. (By Mr. Ward) And you see Mr. Razgaitis is talking
11:06:13 3 about the advantages of royalties in some previous
11:06:18 4 chapters. Do you see that?

11:06:20 5 A. Yes.

11:06:20 6 Q. It says: They provide an opportunity for the seller to
11:06:23 7 receive more than the parties would have expected because
11:06:27 8 the outcome of the license has been greater than expected.
11:06:31 9 That's talking about running royalties, correct?

11:06:32 10 A. That would be my presumption, yes.

11:06:36 11 Q. Right.

11:06:37 12 MR. WARD: And scroll up, Mr. Wietholter. You're
11:06:49 13 making this tough on me.

11:07:06 14 I tell you what, I can use the document camera,
11:07:16 15 Your Honor.

11:07:16 16 Q. (By Mr. Ward) So there can be an opportunity for
11:07:27 17 sellers to receive more than the parties would have or
11:07:30 18 could have expected to, because the outcome of the license
11:07:32 19 has been greater than expected. We saw that, correct?

11:07:34 20 A. Yes.

11:07:35 21 Q. And the seller in this case is the licensor, or Solas
11:07:41 22 in our case, correct?

11:07:42 23 A. I'm sorry, the licensor is either Casio or Atmel.

11:07:49 24 Solas is not at the negotiation.

11:07:50 25 Q. I'm sorry. Casio.

11:07:54 1 A. Yes.

11:07:54 2 Q. And then it says: Likewise, they can be an advantage
11:07:57 3 to the buyer if the market turns out to be much smaller
11:08:00 4 than expected.

11:08:02 5 A. That's correct.

11:08:02 6 Q. With royalty structure, it is more likely that both
11:08:07 7 parties will feel that they got a fair deal years later.

11:08:10 8 Is that what he wrote in his book?

11:08:13 9 A. That's what he wrote about this, yes.

11:08:15 10 Q. You didn't cite that section in your report, did you?

11:08:19 11 A. I didn't, no.

11:08:20 12 Q. Now, did you just tell the jury that we could do some
11:08:35 13 division as a reasonableness check, divide the number of --
11:08:40 14 divide the purchase price by the number of patents and come
11:08:43 15 up to a per-patent price?

11:08:45 16 A. I didn't cite that as a reasonableness check. What I
11:08:51 17 cited that was in response to one of your questions to say
11:08:54 18 that they were only getting back as the royalty what the
11:08:58 19 patents had been sold for. And I was trying to make the
11:09:01 20 point that patent -- you know, when they sold 724 patents
11:09:05 21 for 1.15 million, it's very different than equating that to
11:09:09 22 the royalty for two non-exclusive licenses for that same
11:09:14 23 1.15 million.

11:09:15 24 MR. WARD: Objection, nonresponsive.

11:09:16 25 THE COURT: Sustained.

11:09:21 1 When you said, "I didn't cite that as I
11:09:23 2 reasonableness check," Mr. Martinez, you completely
11:09:25 3 answered the question. And the six or seven or eight lines
11:09:28 4 that you gave after that were beyond the answer called for.

11:09:32 5 I know that this is not your first time to testify
11:09:33 6 in federal court. I'm going to insist that you limit your
11:09:36 7 answers to the questions asked.

11:09:38 8 THE WITNESS: Yes, Your Honor.

11:09:39 9 THE COURT: All right. Let's continue.

11:09:44 10 Q. (By Mr. Ward) You know that's an inappropriate way to
11:09:46 11 calculate reasonable royalty damages, isn't it?

11:09:49 12 A. Doing simple division is not a thorough analysis that's
11:09:57 13 required to do damages.

11:09:58 14 Q. You could never get on the stand and say, I added up
11:10:01 15 the number of patents, I took the purchase price and
11:10:04 16 divided it, and figured out that each patent is worth this
11:10:07 17 amount of money? That would be entirely inappropriate,
11:10:11 18 correct?

11:10:11 19 A. That wouldn't take into account, again, depending on
11:10:14 20 the facts and circumstances, all the caselaw that's
11:10:16 21 required, that's true.

11:10:17 22 Q. But you've been present in Court when Mr. Padian was
11:10:20 23 being cross-examined where he was asked about the price per
11:10:24 24 patent if you took the purchase price and divided it by the
11:10:26 25 number of patents? Weren't you present for that?

11:10:31 1 A. I was present during his testimony. I don't know that
11:10:33 2 I precisely recall that, but, yes, I was present for all of
11:10:37 3 his testimony.

11:10:37 4 MR. WARD: Mr. Wietholter, can we see Slides 11
11:10:40 5 and 12?

11:10:41 6 Q. (By Mr. Ward) Do you recall this question and answer
11:10:43 7 now that I've shown it to you? This is from the
11:10:48 8 cross-examination of Mr. Padian.

11:10:50 9 A. Yes.

11:10:50 10 Q. And that's not appropriate. As a damages expert, you
11:10:54 11 couldn't do this, correct?

11:10:54 12 A. Well, I could do it. If that was my sole basis of my
11:11:00 13 opinion, then I think that I would not -- that would not
11:11:05 14 meet the standard.

11:11:07 15 Q. Well, wouldn't you agree that one of the important
11:11:10 16 things to remember about patents is that just because you
11:11:13 17 have 10 or 20 or a hundred, it doesn't represent value.
11:11:17 18 Would you agree with that statement?

11:11:19 19 A. Yeah. Yes, I would.

11:11:21 20 Q. And value comes from the technology being used, right?

11:11:25 21 A. Right. Value does come from the specific technology.

11:11:31 22 Q. And so any one patent, let's say an Apple or Google
11:11:37 23 owns, that have never been licensed may be worth more than,
11:11:42 24 you know, all the other patents out there.

11:11:44 25 Do you agree with that statement?

11:11:46 1 A. I do, yes.

11:11:47 2 Q. So just the number of patents has no bearing on value.

11:11:51 3 You agree with that statement?

11:11:52 4 A. I do, yes.

11:11:53 5 Q. That's what you testified to, correct? You've

11:11:57 6 testified to that in the past?

11:11:58 7 A. It sounds spot on, so probably, yeah.

11:12:01 8 Q. Yeah, the number of patents has no relationship to

11:12:04 9 value, correct?

11:12:04 10 A. Yeah, the number -- there are many patents -- yes, yes.

11:12:18 11 MR. WARD: Let's look at the UDC agreement,

11:12:21 12 Martinez Slide 2, Mr. Wietholter.

11:12:24 13 Q. (By Mr. Ward) You agree that right across the top of

11:12:28 14 the UDC/SDC or Samsung agreement, it says: OLED Patent

11:12:35 15 License Agreement, right?

11:12:36 16 A. Yes.

11:12:37 17 Q. No doubt that it deals with OLED technology, correct?

11:12:41 18 A. Again, the title says OLED in it, but I'm not in a

11:12:46 19 position to assess the technology.

11:12:48 20 Q. Okay.

11:12:48 21 MR. WARD: Let's go to the next slide. No -- the

11:12:51 22 summary -- No. 1.

11:12:53 23 Q. (By Mr. Ward) You know that that agreement has been

11:12:56 24 extended, renewed, whatever you want to call it, all the

11:12:59 25 way up to January 2018, correct?

11:13:03 1 A. Yes.

11:13:03 2 Q. And it was renewed in July of 2010 and again in August
11:13:08 3 of 2011, correct?

11:13:09 4 A. I believe July of 2010 was an amendment to the 2005
11:13:12 5 agreement. But, yes, that was again renewed in 2011.

11:13:17 6 MR. WARD: You can take that down, Mr. Wietholter.

11:13:19 7 Q. (By Mr. Ward) And -- and -- but you said the right
11:13:21 8 agreement to look at is the Casio/Samsung license, correct,
11:13:27 9 of 2012?

11:13:28 10 A. Well, I said that there's -- there's both a license in
11:13:31 11 2012 and a sale of patents in 2012 that are relevant
11:13:36 12 because it puts -- it's related and it involve both parties
11:13:39 13 to the hypothetical.

11:13:41 14 Q. And you said that Casio made no products that embodied
11:13:47 15 OLED technology. They didn't make them, that's what you
11:13:51 16 testified to in 2012, correct?

11:13:52 17 A. It's my understanding that Casio didn't.

11:13:54 18 Q. And that there was no successful commercialization by
11:13:58 19 Cisco of anything that used these patents, the '450 and the
11:14:01 20 '338, that you were aware of?

11:14:03 21 A. I'm sorry, did you say "Cisco"?

11:14:05 22 Q. I might have. I meant Casio.

11:14:08 23 A. Okay.

11:14:09 24 Q. I misspoke, I'm sorry.

11:14:10 25 A. Sure, no problem.

11:14:11 1 Q. No evidence that Casio was making products that used
11:14:15 2 the '450 or the '338 in 2012, right?

11:14:19 3 A. Yeah, it's my understanding they didn't make products
11:14:22 4 that use those patents.

11:14:24 5 Q. And you did an extensive review in this case, right?

11:14:28 6 A. I tried to, yes.

11:14:29 7 Q. Who is Toppan?

11:14:31 8 A. I think Toppan is an entity that's involved in some
11:14:39 9 patent licensing.

11:14:41 10 MR. WARD: Your Honor, may I approach my binder?

11:14:43 11 THE COURT: You may.

11:14:44 12 Q. (By Mr. Ward) Did you ever cite any reference to
11:14:55 13 Toppan in your report?

11:14:58 14 A. You know, I -- it wouldn't -- I don't know, I guess, is
11:15:04 15 the correct answer.

11:15:05 16 Q. Don't you know that Toppan and Casio joined forces back
11:15:17 17 in 2010?

11:15:19 18 A. That sounds familiar, but it's not a fact that I have
11:15:25 19 on the top of my head.

11:15:27 20 Q. And they were seeking the early commercialization of
11:15:31 21 Organic Light-Emitting Diode, OLED, displays jointly
11:15:37 22 developed by the company named Toppan. The two companies
11:15:40 23 decided that collaboration would be the best for the small
11:15:44 24 and medium display business.

11:15:45 25 Are you familiar with that occurring in 2010?

11:15:47 1 A. I don't have firsthand knowledge, but that sounds like
11:15:50 2 something I learned, yes.

11:15:51 3 Q. You did learn that?

11:15:53 4 A. It sounds like something I might have learned, yes.

11:15:57 5 Q. So Casio sets up a company, they join forces with
11:16:01 6 Toppan to develop OLED products in 2010.

11:16:04 7 You were aware of that when you wrote your report?

11:16:05 8 A. Again, it's not something that I remember, but if it's
11:16:09 9 written in my report, then I would have been aware of it,
11:16:12 10 yes.

11:16:12 11 Q. It's not written in your report, Mr. Martinez. Let me
11:16:15 12 show you what I'm reading from.

11:16:31 13 See there, it's Casio Annual Report 2010. Do you
11:16:40 14 see that?

11:16:40 15 A. I do, yes.

11:16:42 16 Q. And if we go to Page 45 of the report, do you see,
11:16:53 17 right down here, No. 3? Did I read that correctly to you?

11:16:59 18 A. Looks like you did, yes.

11:17:00 19 Q. So you've got Casio entering this business to develop
11:17:07 20 OLED technologies, correct?

11:17:10 21 A. Yes.

11:17:11 22 Q. It might not be wanting to sell its patents in 2012
11:17:17 23 that relate to OLED technology, correct?

11:17:21 24 A. I don't know what they would have wanted to do. I
11:17:24 25 don't know their strategy.

11:17:25 1 Q. But if they were not successful in business five or six
11:17:34 2 years later, they might want to sell those patents,
11:17:38 3 correct?

11:17:38 4 A. That's certainly possible, yes, and we know that they
11:17:43 5 did sell those patents.

11:17:44 6 Q. And you described the patents that were covered in the
11:17:52 7 2012 agreement as OLED and LCD display patents, correct?

11:17:57 8 A. I think I characterized them based on the language in
11:18:01 9 the license, yes.

11:18:03 10 MR. WARD: And if we could look at Table 6, the
11:18:06 11 summary from Mr. Martinez's report.

11:18:11 12 Q. (By Mr. Ward) Do you see right here: SMD licensee,
11:18:22 13 LCD/OLED displays. That's how you characterized them in
11:18:27 14 your report, correct?

11:18:28 15 A. That's correct.

11:18:34 16 MR. WARD: You can take that down. Thank you,
11:18:36 17 Mr. Wietholter.

11:18:45 18 Q. (By Mr. Ward) Let's jump ahead to Clairvortex. You
11:18:47 19 talked about that Clairvortex document. Remember that,
11:18:51 20 Clairvortex's ratings?

11:18:52 21 A. Yes, I remember mentioning Clairvortex in my direct
11:18:55 22 testimony.

11:18:55 23 Q. And you -- I think you told the jury that you wanted to
11:18:58 24 give a fair assessment and a clear picture of what was
11:19:02 25 happening in this case, right?

11:19:04 1 A. What I -- my testimony was, is that I think, Clairvolex
11:19:08 2 and Houlihan Lokey, the advisors for Casio, were trying to
11:19:12 3 give the parties to the negotiation -- the parties that
11:19:16 4 were possibly buying these patents or -- a clear picture.

11:19:21 5 So it wasn't -- I wasn't trying to give them a
11:19:24 6 clear picture. I think it was Clairvolex that was trying
11:19:26 7 to give them a clear picture.

11:19:29 8 Q. Are you trying to be fair and clear with the jury,
11:19:31 9 though?

11:19:31 10 A. Yes, I'd like to be.

11:19:33 11 MR. WARD: Let's look at DDX-7.0019.

11:19:37 12 Q. (By Mr. Ward) Now, did you say on direct that this was
11:19:39 13 some of the feedback?

11:19:40 14 A. I believe I did, yes.

11:19:41 15 Q. Because there's -- one, two -- three magnifying glasses
11:19:47 16 there, correct?

11:19:48 17 A. That's correct.

11:19:48 18 Q. Did you see a different slide during opening?

11:19:51 19 A. I just don't know. Is this a memory test? I just
11:19:59 20 don't know.

11:20:01 21 MR. WARD: Let's see the Defendants' opening slide
11:20:04 22 DDX-1.018.

11:20:07 23 Q. (By Mr. Ward) Something changed. Isn't there
11:20:10 24 something that changed?

11:20:11 25 A. The position of the magnifying glasses changed. I

11:20:18 1 think the position of Clairvortex changed.

11:20:22 2 Q. No, there's a name up there in the top left corner. Do
11:20:25 3 you see that?

11:20:26 4 A. Oh, yes, I do see that.

11:20:27 5 Q. Sagacious IP.

11:20:31 6 And now let's go to your slide. It's not there?

11:20:35 7 A. No, it's not there.

11:20:36 8 Q. Did you remove it?

11:20:37 9 A. No, I didn't.

11:20:38 10 Q. Don't know who removed it?

11:20:40 11 A. Well, I did my slides. I didn't refer to Sagacious in
11:20:46 12 my report, so I'm trying to stay within the bounds of my
11:20:52 13 report.

11:20:52 14 Q. Well, but in opening statement, Samsung referred to
11:20:55 15 Sagacious, didn't they?

11:20:56 16 A. I know I heard the term "Sagacious," yes.

11:21:00 17 MR. WARD: Let's go back to the opening slide.

11:21:02 18 Q. (By Mr. Ward) So you didn't have any involvement with
11:21:05 19 the slide from opening?

11:21:06 20 A. No.

11:21:07 21 Q. But you did have involvement with the next slide. This
11:21:10 22 is your slide?

11:21:11 23 A. Yes.

11:21:11 24 Q. And Sagacious is actually referenced in the Clairvortex
11:21:18 25 document, isn't it, 1301?

11:21:20 1 A. Yeah, it wouldn't surprise me, and I'm happy to
11:21:26 2 elaborate.

11:21:26 3 Q. Well, let's -- let's go look at 1301 at Page 7, Line
11:21:34 4 156. This is a spreadsheet, and these are all those
11:21:36 5 rankings, right? We saw some of these during your direct,
11:21:41 6 didn't we?

11:21:41 7 A. Right. These are the data that Clairvoilex put
11:21:44 8 together, and you can see they did an extensive job, and
11:21:47 9 it's obviously hard to read on this screen.

11:21:49 10 Q. It's hard to read, isn't it?

11:21:51 11 A. Yes.

11:21:52 12 MR. WARD: Let's zoom in to see how they ranked
11:21:55 13 the '311 patent.

11:21:57 14 Q. (By Mr. Ward) All right. So you see Row 156, '311.

11:22:05 15 MR. WARD: And can we move over to see where
11:22:08 16 Sagacious or Sagacious's ranking here is.

11:22:14 17 Q. (By Mr. Ward) And this is 461 patent assets, right?

11:22:18 18 A. This is, yeah, part of the XSense portfolio. I can't
11:22:24 19 remember the exact number, but this is the XSense portfolio
11:22:26 20 we were looking at, I believe.

11:22:30 21 Q. And do you see right there, '311 rank in Sagacious
11:22:35 22 list, No. 8 on short list out of the 461 patents?

11:22:39 23 A. Yes, I do see that.

11:22:40 24 Q. Were you able to see it when you were preparing your
11:22:43 25 report?

11:22:43 1 A. I don't recall seeing this when I was preparing my
11:22:47 2 report, but I certainly looked at this document. I didn't
11:22:50 3 reference Sagacious in my report.

11:22:52 4 Q. But given a fair and clear picture, for some reason,
11:22:57 5 Sagacious dropped off of the slide from opening, to your
11:22:59 6 presentation, right?

11:23:00 7 A. Again, I didn't have anything to do with the opening
11:23:05 8 slides, so...

11:23:06 9 Q. It disappeared. Someone took it off, right? Not you?

11:23:11 10 A. Well, I didn't take it off because I wasn't dealing
11:23:14 11 with the slides. But, generally, my slides represent what
11:23:17 12 I did in my report, and I didn't talk about Sagacious in my
11:23:20 13 report.

11:23:20 14 Q. No, sir, you didn't, but they had a different opinion
11:23:23 15 than Clairvolex and Houlihan Lokey, correct?

11:23:25 16 A. Right, they had a different opinion. They ranked it
11:23:29 17 No. 8 out of the 12. I think, that -- the 12 patents that
11:23:33 18 were actually sold to Solas.

11:23:35 19 Q. So not everyone thought it was a mangy horse, did they?

11:23:40 20 A. Well, I mean, it's all relative. But certainly 8 out
11:23:46 21 of 12.

11:23:49 22 Q. Now, did you look at what Clairvolex was charging for
11:23:52 23 these services of ranking these 461 patents?

11:23:56 24 A. I don't -- I don't know precisely. I think they were
11:24:01 25 paid a percentage or paid a fee.

11:24:02 1 Q. You ever heard the saying "you get what you pay for"?

11:24:06 2 A. I have heard that, yes.

11:24:08 3 MR. WARD: All right. Let's look at DTX-249.

11:24:15 4 Q. (By Mr. Ward) And if you look at the top, this is the
11:24:21 5 Master Service Agreement between Clairvortex and -- I'm
11:24:30 6 trying to find the client here -- oh, it says "client"?

11:24:37 7 MR. WARD: Let's jump ahead to Exhibit A, Page 1
11:24:40 8 and 2 of this. It looks like this is their general
11:24:44 9 agreement -- go back to the first page, please,
11:24:47 10 Mr. Wietholter. I'm sorry.

11:24:49 11 Q. (By Mr. Ward) It looks like this is their form
11:24:54 12 agreement, does it not? Because there's no name, it says
11:25:00 13 "between company and Clairvortex, Inc."?

11:25:02 14 A. Sure, I'll take your word for that.

11:25:05 15 MR. WARD: And if we go to Exhibit A, Page 2.

11:25:14 16 Q. (By Mr. Ward) For Phase 1 --

11:25:17 17 MR. WARD: You can blow that up, please,
11:25:20 18 Mr. Wietholter.

11:25:21 19 Q. (By Mr. Ward) -- it takes four to six weeks, and they
11:25:24 20 charge \$75 per asset. Do you see that?

11:25:27 21 A. I do see that, yes.

11:25:34 22 MR. WARD: And can we find where -- all the
11:25:36 23 services that you get for \$75, Mr. Wietholter? Yeah.

11:25:44 24 Q. (By Mr. Ward) And for \$75, Clairvortex says they're
11:25:47 25 going to look at the probability of prior art, whether the

11:25:51 1 concept is fundamental, relationship to specific markets,
11:25:56 2 all these things they're going to do for you for \$75 per
11:26:00 3 patent, correct?

11:26:01 4 A. Yeah, I see product teardown. I see a number of things
11:26:04 5 that were --

11:26:05 6 Q. That they say they're going to do for \$75?

11:26:08 7 A. Yes, they said they were going to do product teardown
11:26:11 8 for \$75.

11:26:12 9 Q. That's quite the deal, isn't it, Mr. Martinez?

11:26:15 10 A. Yes, it is.

11:26:17 11 Q. All right. All right. Let's talk about the smallest
11:26:28 12 salable patent unit -- patent practicing unit.

11:26:29 13 You said that Mr. Dell got it wrong when he used
11:26:32 14 the OLED display module for the '311 patent, correct?

11:26:36 15 A. Correct.

11:26:37 16 Q. He should have just used the touch sensor, correct?

11:26:40 17 A. Correct.

11:26:40 18 Q. Who told you that the touch sensor practices Claim 7 of
11:26:44 19 the '311 patent?

11:26:44 20 A. Dr. Sierros.

11:26:48 21 Q. Dr. Sierros told you that the touch sensor alone would
11:26:51 22 practice Claim 7 of the '311 patent?

11:26:55 23 A. Well, actually, let me put it -- let me rephrase. I

11:26:58 24 understand and I have to assume infringement. So I

11:27:04 25 understand Dr. Sierros believes it doesn't infringe, but I

11:27:07 1 have to make that assumption.

11:27:08 2 So I didn't evaluate -- I'm not a lawyer. I'm not
11:27:12 3 a patent lawyer. I didn't look at the claims. I don't
11:27:14 4 quite understand them. I assume infringement.

11:27:18 5 Q. But you looked at a touch sensor pad?

11:27:20 6 A. You mean, I physically looked at a touch sensor pad?

11:27:24 7 Q. Or looked at it in the documents to see what they cost,
11:27:28 8 correct?

11:27:28 9 A. Right. I looked at the record and I understand -- for
11:27:31 10 instance, I have an understanding based on the record of
11:27:34 11 what they costs.

11:27:35 12 MR. WARD: Let's look at Plaintiff's Exhibit

11:27:37 13 No. 3.

11:27:38 14 Q. (By Mr. Ward) This is the '311 patent. And let's --
11:27:42 15 you see that?

11:27:42 16 A. I do, yeah.

11:27:43 17 MR. WARD: And jump to Claim 7.

11:27:53 18 Q. (By Mr. Ward) Now, neither one of us are lawyers that
11:27:56 19 practice before the Patent and Trademark Office, are we,
11:27:58 20 Mr. Martinez?

11:27:58 21 A. I know I am not.

11:28:00 22 Q. But you can look down here and read that one of the
11:28:02 23 limitations, the last one of Claim 7 says: One or more
11:28:07 24 computer-readable non-transitory storage media embodying
11:28:10 25 logic that is configured when executed to control the touch

11:28:13 1 sensor.

11:28:13 2 Correct?

11:28:14 3 A. That's how it reads, yes.

11:28:16 4 Q. And the touch sensor panel that you looked at did not
11:28:20 5 include hardware and software for running the touch sensor,
11:28:25 6 did it?

11:28:29 7 A. I can't say that I looked at anything. I was
11:28:36 8 evaluating what Mr. Dell did, so I didn't make an
11:28:39 9 independent assessment other than evaluating his analysis,
11:28:41 10 and it didn't have anything specifically to do with the
11:28:44 11 physical product.

11:28:44 12 Q. The smallest salable patent practicing unit, right?
11:28:49 13 It's got to patent the practice to account for the SSPPU,
11:28:54 14 correct?

11:28:54 15 A. Yes, smallest salable patent practicing unit.

11:28:57 16 Q. So whatever you look at has got to include hardware and
11:29:02 17 software, does it not, Mr. Martinez?

11:29:04 18 A. Again, I think this is out of my area of expertise. I
11:29:12 19 mean, I don't -- I feel for the jury, and I appreciate that
11:29:15 20 these are hard to -- I'm not exactly sure what this means,
11:29:19 21 and I would hate to impose my lay judgment on a legal
11:29:22 22 issue.

11:29:22 23 Q. All right. You also said he didn't do -- use the right
11:29:28 24 SSPPU for the '450 and the '338, that he should not have
11:29:32 25 used the entire OLED display module, correct?

11:29:37 1 A. Correct.

11:29:37 2 Q. What was he supposed to strip out? What pieces did he
11:29:41 3 need to strip out to get to the SSPPU?

11:29:43 4 A. Again, my understanding is that the OLED panel itself,
11:29:46 5 not the whole OLED display, that's the appropriate SSPPU
11:29:50 6 for the Casio patents.

11:29:51 7 Q. All right. So what's the price difference between
11:29:53 8 those two? Since he used the wrong one, what's the right
11:29:57 9 price?

11:29:57 10 A. Well, we heard -- well, I don't know the right price
11:30:01 11 because I don't believe that that's the appropriate remedy
11:30:04 12 with the cost savings.

11:30:05 13 Q. So you're just here to tell the jury that Mr. Dell got
11:30:08 14 it wrong, but you're not going to tell them what the right
11:30:11 15 number is for the smallest salable patent practicing unit,
11:30:16 16 correct? You don't have an opinion as to what the correct
11:30:18 17 price is for the SSPPU, do you?

11:30:20 18 A. No, I don't, but it's not relevant to my analysis or --
11:30:27 19 or -- it's not relevant.

11:30:34 20 MR. WARD: Your Honor, I'm now going to go into
11:30:37 21 confidential information. Request that the courtroom be
11:30:41 22 sealed.

11:30:42 23 THE COURT: I'll order the courtroom to be sealed.
11:30:45 24 Those present and not subject to the protective order in
11:30:48 25 this case should exit and remain outside until the

11:30:55 1 courtroom is reopened and unsealed.

11:30:58 2 (Courtroom sealed.)

11:30:58 3 (This portion of the transcript is sealed

11:30:58 4 and filed under separate cover as

12:00:30 5 Sealed Portion No. 22.)

12:00:30 6 (Courtroom unsealed.)

12:00:30 7 THE COURT: Ladies and gentlemen, you have now

12:00:32 8 heard all the evidence in this case. There are several

12:00:38 9 things that I need to take up with counsel that have to be

12:00:42 10 dealt with outside of your presence before I will be in a

12:00:45 11 position to give you my final instructions and ask you to

12:00:50 12 then hear closing arguments from the attorneys and after

12:00:55 13 that retire to the jury room and deliberate on the verdict.

12:00:57 14 I hope to be in a position to start with my final

12:01:00 15 instructions to you in the early to midpart of this

12:01:04 16 afternoon. That's my best guess.

12:01:07 17 It's 12:00 o'clock now. I'm advised by

12:01:09 18 Ms. Clendening that your lunch is waiting for you in the

12:01:12 19 jury room. I'm going to simply ask that you be available

12:01:23 20 and not away from the courthouse anytime after 2:00

12:01:40 21 o'clock.

12:01:40 22 Now, this is not science; this is art. I'm

12:01:42 23 guessing as to when I'm going to be ready. You may have to

12:01:46 24 wait on me when you get here at 2:00 o'clock. I may be

12:01:50 25 ready to go and be waiting on you.

12:01:51 1 But I'm basically going to give you your own time
12:01:54 2 back from now until 2:00 o'clock. And at such point as
12:02:00 3 you're here and I'm ready, I will bring you back into the
12:02:02 4 courtroom and give you my final instructions on the law,
12:02:05 5 you'll hear closing arguments from counsel for both of the
12:02:08 6 parties, and then I'll direct you to retire and deliberate
12:02:11 7 on your verdict in this case.

12:02:13 8 We are coming to the end of the process. It is
12:02:19 9 more important now than when we started that you follow
12:02:22 10 every instruction I've given you about your conduct. Don't
12:02:27 11 discuss this case with anyone. Don't discuss this case
12:02:31 12 with each other. Don't do any research. Don't do any of
12:02:35 13 the things I've told you not to do. Reflect upon and make
12:02:39 14 sure that you're scrupulously following my instructions
12:02:42 15 about your conduct.

12:02:44 16 It would be a travesty to have a problem this late
12:02:47 17 in the process. And I'm confident that you'll do that. I
12:02:50 18 just want to remind you one last time.

12:02:52 19 I would suggest you take your notebooks with you
12:02:57 20 to the jury room over the lunch break, and what you do
12:03:01 21 between now and 2:00 o'clock, I'll leave to your good
12:03:04 22 judgment. Just be available and in the jury room ready by
12:03:08 23 2:00 p.m.

12:03:10 24 Again, I'm not sure if I'll be ready, I'm not sure
12:03:13 25 if you'll have to wait on me, we'll just play it by ear.

12:03:18 1 But as soon as I'm prepared to give you my final
12:03:20 2 instructions and you're assembled and ready, we will get
12:03:24 3 that done.

12:03:25 4 With that, ladies and gentlemen, you're excused
12:03:27 5 for lunch and until 2:00 p.m.

12:03:29 6 COURT SECURITY OFFICER: All rise.

12:03:31 7 (Jury out.)

12:03:33 8 THE COURT: Be seated, please.

12:04:03 9 Mr. Martinez, you may step down, sir.

12:04:06 10 THE WITNESS: Thank you.

12:04:08 11 THE COURT: Counsel, it's my intention to take a
12:04:12 12 lunch break, and I'd like to have those of each trial team
12:04:21 13 back in the courtroom at or around 12:45, at which time I
12:04:27 14 plan to be back on the bench to take up motions either
12:04:31 15 party would care to offer under Rule 50(a).

12:04:34 16 I think having heard all the evidence, the Court
12:04:37 17 is in a position to have a good grasp on what Plaintiff may
12:04:42 18 move for and what Defendant may move for under Rule 50(a).

12:04:45 19 I don't need 30-page briefs. I need an
12:04:50 20 identification of the topics you want to move on and a
12:04:54 21 succinct explanation of the reasons why you believe the
12:04:57 22 record that's fresh before all of us would support that.

12:05:00 23 I'll hear targeted argument, and then I'll give
12:05:02 24 you rulings on your motions.

12:05:03 25 After we've completed the 50(a) practice portion

12:05:11 1 of the proceedings, then I'll conduct an informal charge
12:05:16 2 conference, and I'll do that here in the courtroom off the
12:05:19 3 record and informally. I invite every member of each trial
12:05:24 4 team to be present.

12:05:25 5 By the same token, those of you that are going to
12:05:28 6 present closing arguments later today, you're certainly
12:05:34 7 excused at this point forward over the 50(a) practice and
12:05:38 8 over the informal charge conference portion of the day and
12:05:41 9 through the formal charge conference that will follow the
12:05:44 10 informal charge conference so that you can use that time to
12:05:48 11 prepare for closing arguments later this afternoon.

12:05:51 12 Are there questions from either side at this
12:05:55 13 juncture?

12:05:56 14 MR. FENSTER: Your Honor, may I just inquire, when
12:05:58 15 we come back at 12:45, is it your intention to address the
12:06:01 16 50(a)s first and then the charge?

12:06:04 17 THE COURT: Yes.

12:06:04 18 MR. FENSTER: Thank you, Your Honor.

12:06:05 19 THE COURT: Any questions from Defendants?

12:06:08 20 MS. SMITH: No, Your Honor.

12:06:08 21 THE COURT: All right. You're excused until
12:06:14 22 12:45.

12:06:14 23 The Court stands in recess.

12:06:15 24 COURT SECURITY OFFICER: All rise.

12:06:16 25 (Recess.)

12:53:53 1 (Jury out.)

12:53:53 2 COURT SECURITY OFFICER: All rise.

12:53:55 3 THE COURT: Be seated, please.

12:57:27 4 Let me ask this, counsel, are both sides prepared

12:57:33 5 at this point to read into the record any exhibits that

12:57:36 6 were used during today's portion of the trial? We're going

12:57:39 7 to have to get that done before I bring the jury back in.

12:57:44 8 If you're ready to do that, let's just get that

12:57:47 9 checked off our list. If you're not, I'll come back to it

12:57:50 10 later.

12:57:51 11 MS. HENRY: My apologies, Your Honor, I have not

12:57:56 12 thought of that. So we are not, but we'll hurry up and

12:58:01 13 make sure that we're ready to do it before you give your

12:58:04 14 charge to the jury.

12:58:06 15 THE COURT: All right. We'll come back to that.

12:58:07 16 All right. Counsel, having heard all of the

12:58:16 17 evidence in the case, the Court is prepared at this time to

12:58:18 18 take up motions from either Plaintiff or Defendants under

12:58:23 19 Rule 50(a) of the Federal Rules of Civil Procedure.

12:58:25 20 What I would request from both sides as a starting

12:58:29 21 place is for a single spokesman from each side to go to the

12:58:34 22 podium and give me a list of the substantive topics on

12:58:37 23 which you want to move under Rule 50(a).

12:58:41 24 It is common that there is often a motion on both

12:58:46 25 sides that's diametrically opposed to the other, and I can

12:58:50 1 effectively hear argument on that same topic from both
12:58:54 2 sides concurrently.

12:58:55 3 And knowing what the topics are, allows me to
12:59:00 4 focus the argument better and more efficiently that way.

12:59:03 5 So, with that, let me ask a representative of the
12:59:07 6 Plaintiff to go to the podium and identify the topics. I
12:59:14 7 don't want argument. I just want an identification
12:59:16 8 substantively.

12:59:17 9 MR. UDICK: Thank you, Your Honor. Steve Udick
12:59:20 10 for Plaintiff.

12:59:21 11 The Plaintiff intends to move on -- 50(a) on
12:59:27 12 infringement, on invalidity -- or on validity of the '311
12:59:32 13 patent over Chen, on validity of the '450 patent, on
12:59:39 14 willfulness.

12:59:42 15 THE COURT: On which particular patent or patents?

12:59:46 16 MR. UDICK: Willfulness with regard to the '311
12:59:49 17 patent against all Defendants, and on damages.

12:59:56 18 THE COURT: All right. Let me hear a similar
12:59:58 19 identification from Defendants.

01:00:01 20 MR. DANIEL CHO: Good afternoon, Your Honor.
01:00:03 21 Daniel Cho on behalf of Defendants.

01:00:05 22 Defendants intend to move for judgment as a matter
01:00:08 23 of law on non-infringement of the asserted claims of the
01:00:11 24 '450, the '338, and the '311 patents; and judgment as a
01:00:16 25 matter of law of no indirect infringement of the asserted

01:00:19 1 claims of the '450, '338, and '311 patents; no willful
01:00:23 2 infringement of the '311 patent; invalidity of the asserted
01:00:27 3 claims of the '450 and '311 patents; and a JMOL of no
01:00:33 4 damages. And, in the alternative, damages to be limited to
01:00:36 5 no more than a fully paid-up lump sum of 1,650,000.

01:00:42 6 Thank you, Your Honor.

01:00:43 7 THE COURT: All right. Thank you.

01:00:44 8 As I suspected, there are some areas where both
01:00:52 9 parties are moving in opposite directions that are
01:00:54 10 diametrically opposed but they cover the same substantive
01:00:59 11 areas of the case, and I can efficiently hear argument
01:01:03 12 grouped around those areas.

01:01:05 13 So let's start with the
01:01:09 14 infringement/non-infringement arguments. And let me hear
01:01:12 15 Plaintiff's position, followed by Defendants.

01:01:21 16 And as I mentioned before we recessed for lunch,
01:01:27 17 the Court would appreciate as succinct and targeted an
01:01:31 18 argument from each side as possible. We have a lot to
01:01:33 19 cover today, and I'm clearly aware of the evidence, having
01:01:37 20 just sat through all of it, and there's no need to go back
01:01:42 21 and refresh my recollection.

01:01:44 22 But go ahead, counsel.

01:01:47 23 MR. BUCZKO: Good afternoon, Your Honor. Jacob
01:01:48 24 Buczko for Plaintiff.

01:01:50 25 So proposed under Rule 50 for a verdict of literal

01:01:51 1 infringement against Samsung, Solas has proven that
01:01:51 2 beginning in 2013 and continuing through the present,
01:01:56 3 Samsung has made, used, sold, offered to sale --

01:01:59 4 THE COURT: Slow down, please.

01:02:01 5 MR. BUCZKO: Yes.

01:02:02 6 -- or imported into the United States the accused
01:02:04 7 products without Solas's permission. Solas has
01:02:06 8 demonstrated this through the testimony of at least its
01:02:09 9 expert, Mr. Credelle, Mr. Repice, and through Mr. Kwak.

01:02:14 10 In addition, Mr. Repice has admitted that it
01:02:18 11 imports the accused products in the United States and would
01:02:20 12 be liable if Solas has shown the accused devices infringe
01:02:25 13 the asserted claims of the patents.

01:02:25 14 Defendant has not introduced any contrary
01:02:27 15 testimony or any other evidence and a reasonable juror
01:02:30 16 cannot find otherwise.

01:02:31 17 Solas has proven, at least through Mr. Credelle's
01:02:36 18 testimony, its expert, Dr. Fontecchio, and Mr. Kwak's
01:02:38 19 admissions that every element of Claims 4 and 5 of the '450
01:02:42 20 patent --

01:02:42 21 THE COURT: Counsel, you're obviously reading, and
01:02:46 22 you're going much too fast for me to follow you, please
01:02:50 23 slow down. Even if you're reading, take your time, slow
01:02:53 24 down.

01:02:53 25 MR. BUCZKO: Yes, Your Honor.

01:02:55 1 -- is literally found in the Galaxy Note 3, Galaxy
01:02:58 2 Note 4, Galaxy Note 4 Edge, Galaxy Note 5, Galaxy Note 8,
01:03:05 3 Galaxy S4, Galaxy S5, Galaxy S7, Galaxy S7 Edge, Galaxy S8,
01:03:14 4 and Galaxy S8 Plus devices.

01:03:17 5 Solas has also proven, at least through
01:03:20 6 Mr. Credelle's testimony and Dr. Fontecchio's and
01:03:24 7 Mr. Kwak's admissions, that every element of Claims 5 and 9
01:03:27 8 of the '338 patent is literally found in the Galaxy Note 3,
01:03:30 9 Galaxy Note 4, Galaxy Note 4 Edge, Galaxy Note 5, Galaxy
01:03:36 10 Note 8, Galaxy Note 9, Galaxy S4, Galaxy S5, Galaxy S6 Edge
01:03:46 11 Plus, Galaxy S8, Galaxy S8 Plus, Galaxy S9, and Galaxy S9
01:03:54 12 Plus.

01:03:55 13 Solas has further proven, at least through
01:03:59 14 Mr. Credelle's testimony and Dr. Fontecchio's and
01:04:02 15 Mr. Kwak's admissions, that every element of Claims 7 and
01:04:05 16 12 of the '311 patent is literally found in the Galaxy
01:04:08 17 Note 9, Galaxy Note 10, Galaxy Note 10 Plus, Galaxy S8,
01:04:16 18 Galaxy S9, Galaxy S9 Plus, Galaxy S10, Galaxy S10 Plus,
01:04:20 19 Galaxy S10 5G, Galaxy S20, Galaxy S20 Plus, Galaxy S20
01:04:28 20 Ultra, and Galaxy Z Flip.

01:04:30 21 Mr. Credelle presented hours of testimony
01:04:34 22 detailing infringement of each element of the asserted
01:04:36 23 claims of the asserted -- each of the asserted patents
01:04:39 24 using Samsung's own documents and sworn testimony from
01:04:42 25 Samsung's witnesses and referred to exhibits including:

01:04:46 1 PTX-95, PTX-160, PTX-123, PTX-131, PTX-163, PTX-135,
01:04:57 2 PTX-16, PTX-117, PTX-142, DTX-892, DTX-989, DTX-993,
01:05:08 3 DTX-1208, and DTX-681 as just examples.

01:05:13 4 Samsung did not even attempt to provide evidence
01:05:16 5 for the majority of the asserted claim elements. A
01:05:20 6 reasonable juror cannot find otherwise. If there was any
01:05:24 7 contrary testimony about the evidence from Solas's
01:05:26 8 witnesses, Dr. Fontecchio --

01:05:29 9 THE COURT: Counsel, speak up so I can hear you,
01:05:31 10 and slow down a little bit more.

01:05:33 11 MR. BUCZKO: -- Mr. Kwak impermissibly conflicts
01:05:37 12 with this Court's Markman and summary judgment orders.

01:05:40 13 Furthermore, based on the evidence presented,
01:05:42 14 Solas has also shown indirect infringement of the asserted
01:05:45 15 claims through at least Mr. Kwak's and Mr. Kim's and
01:05:51 16 Mr. Repice's admissions that Samsung is a global company
01:05:55 17 and a global leader in the smartphones and sells its
01:05:59 18 products worldwide.

01:06:02 19 In addition, we heard testimony that Samsung files
01:06:07 20 consolidated financial statements and with SEC being the
01:06:13 21 parent and owning all of SEA and having a display arm being
01:06:19 22 SDC.

01:06:20 23 Solas has proven that it owns the '450, '338, and
01:06:24 24 '311 patents through at least the testimony of Mr. Gerry
01:06:29 25 Padian and Exhibits PTX-550 and PTX-549.

01:06:32 1 Defendants have not introduced any contrary
01:06:34 2 testimony or other evidence, and a reasonable juror cannot
01:06:38 3 find otherwise.

01:06:39 4 THE COURT: All right. Let me hear Defendants'
01:06:40 5 response. And I'd like to hear Defendants' arguments on
01:06:47 6 both literal and indirect infringement.

01:06:49 7 MR. AUSTIN: Your Honor, Tarek Austin for
01:07:03 8 Defendants.

01:07:03 9 THE COURT: Counsel, would you remove your mask?
01:07:07 10 I'll hear you a lot clearer if we don't have to listen
01:07:11 11 through the material.

01:07:12 12 MR. AUSTIN: Thank you, Your Honor.

01:07:13 13 I'll address the motion for the judgment as a
01:07:15 14 matter of law on the non-infringement of the '450 and the
01:07:18 15 '338 patents, and then I'll hand over to my colleague
01:07:21 16 for -- to address the '311.

01:07:22 17 THE COURT: That's fine.

01:07:24 18 MR. AUSTIN: We would submit, Your Honor, that as
01:07:27 19 for non-infringement of the '450 patent, Solas has failed
01:07:32 20 to provide sufficient evidence that Samsung's products meet
01:07:36 21 the following limitations:

01:07:38 22 First, the first electrode connected to the drive
01:07:42 23 transistor and selection transistor. In the accused
01:07:46 24 products, as we -- as we heard, the alleged drive
01:07:52 25 transistor is T1, the alleged selection transistor is T3.

01:07:57 1 The testimony from both Mr. Credelle and
01:08:03 2 Dr. Fontecchio made clear that it's undisputed that there's
01:08:06 3 an intervening transistor, T6, between the alleged drive
01:08:13 4 transistor and alleged selection transistor.

01:08:16 5 We would also submit that Dr. Fontecchio's
01:08:19 6 testimony established that the claims require a physical
01:08:23 7 connection as opposed to an electrical connection, as
01:08:30 8 Mr. Credelle testified.

01:08:31 9 We also submit that Samsung's products fail to
01:08:38 10 meet the limitation of an electroluminescent material
01:08:42 11 formed so as to cover the transistors. In this respect, we
01:08:49 12 would submit that Mr. -- that Solas failed to provide
01:08:53 13 adequate proof of infringement, insofar as Mr. Credelle
01:08:59 14 himself testified during cross-examination that he did not
01:09:03 15 know the precise boundaries of where the electroluminescent
01:09:08 16 material lays; and, therefore, his testimony that the
01:09:19 17 electroluminescent material necessarily covers the
01:09:22 18 transistors is unreliable.

01:09:25 19 Finally, Your Honor, with respect to the '450, we
01:09:31 20 would submit that Solas has failed to provide
01:09:34 21 particularized product-specific evidence of infringement.

01:09:41 22 In Mr. Credelle's direct examination, Mr. Credelle
01:09:47 23 provided exemplary -- showed to the jury exemplary products
01:10:02 24 and then, at the very end of his presentation, identified
01:10:06 25 the exhibits he was relying on, but that he did not

01:10:10 1 actually show the GDS files for every single product,
01:10:16 2 which, in our view, is necessary for the jury to assess on
01:10:19 3 infringement.

01:10:19 4 With respect to the '338 patent, Your Honor, we
01:10:26 5 would also submit that Solas has failed to provide
01:10:29 6 sufficient evidence that Samsung's products meet the
01:10:32 7 following limitations. There are four of them, three are
01:10:37 8 common to all products. The last one is only for certain
01:10:43 9 accused products.

01:10:43 10 First, Solas has failed to show the limitation of
01:10:50 11 a driving transistor, one of the source and the drain of
01:10:52 12 which is connected to the pixel electrode, is met in any of
01:10:56 13 the accused products.

01:10:59 14 Similarly, to -- as I was explaining for the --
01:11:04 15 arguing for the '450 patent, there is an intervening
01:11:07 16 transistor, T6. Both experts agree to that point, both
01:11:13 17 Mr. Credelle and Dr. Fontecchio.

01:11:18 18 Again, we believe Dr. Fontecchio's testimony
01:11:20 19 established that the connection between the source or the
01:11:28 20 drain of the driving transistor and the pixel electrode
01:11:32 21 must be physical.

01:11:35 22 And with respect to the '338 patent, in
01:11:38 23 particular, we believe Mr. Credelle's theory that the
01:11:44 24 connection can be electrical is clearly inconsistent with
01:11:50 25 the claim language, which specifies that only one of the

01:11:53 1 source and the drain of the transistor can be connected.

01:11:59 2 If we were talking about electrical connection
01:12:00 3 here, then either none or both of the source and drain of
01:12:07 4 T1 would be connected.

01:12:12 5 Second, Your Honor, with respect to the '338
01:12:14 6 patent, we believe the switch transistor, which makes a
01:12:20 7 write current flow, that limitation is not met in any of
01:12:24 8 the accused products.

01:12:25 9 The reason is that, as Dr. Fontecchio's testimony
01:12:30 10 established, Samsung's seven-transistor circuit has a
01:12:36 11 push-in current. The current is not pulled out of the
01:12:38 12 circuit.

01:12:41 13 Dr. Fontecchio and Mr. Kwak both testified that
01:12:46 14 current does not flow through a capacitor and, therefore,
01:12:50 15 cannot be pulled out of the accused products' circuits.

01:13:01 16 We would also submit that the accused products do
01:13:02 17 not meet the holding transistor between the -- the holding
01:13:07 18 transistor that holds a voltage between the gate and source
01:13:10 19 of the driving transistor limitation.

01:13:14 20 Dr. Fontecchio's testimony established that the
01:13:18 21 alleged holding transistor for the '338 patent, which is
01:13:23 22 T3, holds a voltage between a gate and the drain of the
01:13:28 23 driving transistor, T1, not between the gate and the
01:13:32 24 source.

01:13:32 25 We believe that Mr. Credelle's -- Mr. Credelle did

01:13:36 1 not offer the specific opinion that T3 holds a voltage
01:13:44 2 between the gate and the drain of T1. Mr. Credelle offered
01:13:50 3 a slightly different but materially different opinion,
01:13:53 4 which is that when T3 is off, the capacitor in the circuit
01:14:00 5 holds a voltage between the source of T1 and the gate of
01:14:07 6 T1.

01:14:07 7 Finally, Your Honor, we submit that with respect
01:14:11 8 to a subset of the accused products, specifically the
01:14:17 9 Galaxy Note 8, Note 9, S8, S8 Plus, S9, and S9 Plus, these
01:14:25 10 products do not have the required interconnections.

01:14:30 11 And the reason for that is Dr. Fontecchio
01:14:33 12 testified that a person of ordinary skill in the art would
01:14:37 13 understand, in view of the patent specification, that the
01:14:43 14 claim language "interconnections" means interconnects that
01:14:49 15 supply electrical signal to the pixel electrode.

01:14:51 16 And for the products that I just listed, there is
01:14:55 17 no dispute, Mr. Credelle did not argue to the contrary,
01:14:59 18 that the wavy lines identified by Mr. Credelle as the
01:15:06 19 alleged interconnects do not electric -- electrically
01:15:12 20 connect to the pixel electrode.

01:15:13 21 For these reasons, Your Honor, we would -- we move
01:15:19 22 that the Court enter judgment as a matter of law of
01:15:26 23 non-infringement by all the accused products of the '450
01:15:29 24 and '338 patents.

01:15:31 25 I'll turn it over to my colleague --

01:15:34 1 THE COURT: All right.

01:15:36 2 MR. AUSTIN: -- to address the '311.

01:15:39 3 THE COURT: Let me hear your arguments on
01:15:42 4 non-infringement as to the '311 patent.

01:15:43 5 MR. DANIEL CHO: Yes, Your Honor. And before I
01:15:44 6 begin, I just wanted to note for the record, just maybe
01:15:48 7 minutes before your direction earlier this afternoon that
01:15:51 8 you would not like to see written positions on our
01:15:56 9 judgment -- motions for judgment as a matter of law, we did
01:16:01 10 file a 27-page brief that laid out our positions.

01:16:05 11 We apologize for that, Your Honor. I understand
01:16:07 12 your practice in that regard now, but we just submit that
01:16:10 13 the positions are in the brief. It's Docket No. 335. But
01:16:14 14 to speed up this process, I'd like to hit just a couple
01:16:18 15 high-level points.

01:16:19 16 THE COURT: That's fine. I'm not going to delay
01:16:23 17 instructing this jury or submitting the case to the jury so
01:16:26 18 that I can go read and digest a 27-page brief on a 50(a)
01:16:33 19 motion.

01:16:34 20 That may well be why those that wrote the rule
01:16:38 21 provided for 50(b) and the opportunity under 50(b) to fully
01:16:44 22 brief at whatever page limits the particular Court might
01:16:48 23 have. But I don't find it feasible or fair to the jury to
01:16:52 24 delay them and have them sit for hours while I read
01:16:57 25 competing briefing of that magnitude.

01:17:00 1 I am happy to hear your targeted arguments. I'm
01:17:04 2 happy for you to reference what you believe the evidentiary
01:17:06 3 record created through the trial shows to support your
01:17:11 4 position.

01:17:12 5 As noted, I've listened carefully to all the
01:17:15 6 evidence throughout the trial, and I'm prepared to hear
01:17:18 7 your arguments and consider them. But you need to present
01:17:21 8 them orally and succinctly and --

01:17:24 9 MR. DANIEL CHO: Yes, Your Honor, thank you.

01:17:28 10 THE COURT: -- that's -- that's where I am. Go
01:17:31 11 ahead. Let me hear from you on the '311.

01:17:33 12 MR. DANIEL CHO: Thank you.

01:17:33 13 Defendants move for judgment as a matter of law of
01:17:35 14 non-infringement of the '311 patent. At trial, Solas
01:17:38 15 asserted infringement of Claim 7 and 12 of the '311 patent.

01:17:44 16 Among other limitations, Claim 7 recites the
01:17:47 17 substantially flexible substrate and touch sensor
01:17:49 18 configured to wrap around one or more edges of a display.

01:17:52 19 Solas failed to certify its burden of proof of
01:17:56 20 proof of infringement on the 13 accused products for two
01:18:02 21 different reasons.

01:18:08 22 The '311 accused products do not satisfy the
01:18:10 23 substantially flexible substrate configured to wrap around
01:18:14 24 one or more edges of a display limitation.

01:18:17 25 There's no dispute that Claim 7 requires the

01:18:21 1 mentioned display as a limitation. And the recited
01:18:22 2 substantially flexible substrate to be satisfied by an
01:18:24 3 accused product, the required substrate must be a separate
01:18:30 4 and distinct element from the display.

01:18:31 5 We heard from Mr. Credelle, who points to the
01:18:36 6 thin-film encapsulation, or TFE layer, that includes a
01:18:39 7 lower CVD layer, TFE monomer, an upper CVD layer as a
01:18:43 8 substantially flexible substrate required by Claim 7.

01:18:47 9 This TFE layer, as shown by these documents
01:18:52 10 DTX-633, DTX-677, DTX-669, exemplary documents, show that
01:18:59 11 this TFE layer is part of the display.

01:19:02 12 There's no dispute that the TFE layer is required
01:19:05 13 for a functioning display, as shown by the testimony of at
01:19:10 14 least Mr. Kwak, Dr. Sierros, and also testimony from
01:19:14 15 Mr. Credelle.

01:19:14 16 The TFE layer thus constitutes a part of the
01:19:19 17 display. And, accordingly, the TFE layer that Solas has
01:19:21 18 pointed to is part of the display and cannot be the claimed
01:19:24 19 substrate that must be distinct and separate from the
01:19:28 20 referenced display, the language in the claims.

01:19:30 21 The TFE does not satisfy the limitation that we
01:19:34 22 were just talking about, substantially flexible substrate
01:19:37 23 configured to wrap around one or more edges of the display.

01:19:40 24 In terms of the Galaxy Z Flip, when it's folded,
01:19:48 25 the display panel of the Z Flip wraps around the touch

01:19:53 1 sensor, while the claims in the patent -- Claims 7 and 12
01:19:55 2 that are asserted against Defendants require wrapping the
01:19:58 3 other way around.

01:19:59 4 And we heard this from the testimony of
01:20:03 5 Dr. Sierros and also shown in documents, at least DTX-749.

01:20:08 6 And we submit that no reasonable jury would
01:20:11 7 conclude that the Galaxy Z Flip infringes Claims 7 and 12
01:20:15 8 for the reasons I just discussed.

01:20:16 9 As for some other accused products, Solas
01:20:19 10 generally pointed to the curvature in the accused products
01:20:21 11 to satisfy this limitation, but the evidence, however,
01:20:24 12 shows that argument is not supported.

01:20:29 13 The '311 accused products do not have the required
01:20:33 14 intersection between two or more surfaces of a display in
01:20:37 15 which the intersection is wrapped around by the claimed
01:20:41 16 touch sensor.

01:20:41 17 Those products have only a surface that curves
01:20:45 18 towards an edge, and thus cannot be ratified by the
01:20:47 19 asserted claims. And this is shown in documents, at least
01:20:49 20 DTX-989, DTX-1045, DTX-995, DTX-1049, and we also heard
01:20:59 21 testimony from Dr. Sierros in this regard.

01:21:01 22 For this reason, Defendants move for judgment as a
01:21:05 23 matter of law on infringement for the asserted claims of
01:21:07 24 the '311 patent.

01:21:08 25 THE COURT: All right. Thank you, counsel.

01:21:10 1 Let's move next -- I'd like to hear competing
01:21:15 2 arguments on the issues of validity and invalidity.

01:21:22 3 And it's apparent that there is not an invalidity
01:21:25 4 challenge to the '338 patent, correct?

01:21:31 5 MR. TSUEI: That's correct, Your Honor.

01:21:34 6 MR. DANIEL CHO: That's correct, Your Honor.

01:21:35 7 THE COURT: Okay. Let me hear your arguments
01:21:37 8 competing with regard to the issue of validity on the '450
01:21:40 9 and the '311 patents.

01:21:44 10 And let me say this, counsel: I have a scheduled
01:21:48 11 phone call to take at 1:30 or shortly thereafter. That's
01:21:52 12 why this is one of the rare times I have my cell phone on
01:21:55 13 the bench, and I promise you it's muted. But if that call
01:21:59 14 comes through, I'll have to recess and take that call, and
01:22:02 15 then I'll be back shortly.

01:22:04 16 Go ahead.

01:22:04 17 MR. TSUEI: Okay. Thank you, Your Honor. May it
01:22:06 18 please the Court.

01:22:06 19 My name is James Tsuei. I'll be presenting
01:22:10 20 Solas's motion for judgment as a matter of law on the '311
01:22:13 21 patent issues related to invalidity, and my colleague,
01:22:16 22 Mr. Rubin, will be presenting Solas's arguments on
01:22:20 23 invalidity related to the '450 patent.

01:22:20 24 THE COURT: Give me your name again, please.

01:22:23 25 MR. TSUEI: James Tsuei, Your Honor.

01:22:24 1 THE COURT: Thank you. Go ahead, Mr. Tsuei.

01:22:28 2 MR. TSUEI: So Solas moves for judgment as a
01:22:29 3 matter of law for no invalidity based on Chen because the
01:22:30 4 record establishes that Chen is not prior art. We
01:22:34 5 satisfied our burden of production under the Federal
01:22:37 6 Circuit's burden-shifting framework for antedation claims
01:22:41 7 in district court.

01:22:42 8 That framework is set forth, for the record, in
01:22:47 9 Technologies Licensing Corp. versus Videotek, Incorporated,
01:22:50 10 545 F.3d 1316, Federal Circuit opinion from 2008.

01:22:56 11 Solas satisfied its burden of production under
01:23:00 12 that burden-shifting framework by producing unrebutted
01:23:07 13 evidence and expert and testimony that the invention of the
01:23:10 14 '311 patent predates by six months the July 19th, 2011,
01:23:14 15 effective date of the Chen reference.

01:23:16 16 We also provided unrebutted evidence and expert
01:23:20 17 opinion that the invention of the '311 patent was actually
01:23:23 18 reduced to practice on July 8th, 2011, before the effective
01:23:29 19 date of the Chen reference.

01:23:30 20 That evidence includes, as the Court is well
01:23:36 21 aware, the voluminous documentary evidence, as well as the
01:23:38 22 testimonies of Mr. Yilmaz and Mr. Shaikh, named inventors,
01:23:41 23 as well as the expert opinion of Mr. Credelle.

01:23:44 24 In doing so, Solas shifted the burden back on to
01:23:49 25 Samsung, who under the proper framework, bears the ultimate

01:23:54 1 burden of persuasion that they have to prove with clear and
01:23:56 2 convincing evidence that Chen is prior art. They failed to
01:24:01 3 rebut any of Solas's testimony or evidence on this point.

01:24:05 4 For example, as Your Honor may remember,
01:24:08 5 Dr. Sierros yesterday admitted he had no opinions rebutting
01:24:12 6 Solas's claims of earlier invention and reduction to
01:24:15 7 practice, despite having every opportunity to have done so.

01:24:19 8 In sum, as the record contains no factual disputes
01:24:23 9 regarding the invention and reduction to practice story as
01:24:27 10 presented by Solas in this case, we submit to Your Honor
01:24:30 11 that no reasonable juror could find that Samsung satisfied
01:24:35 12 its burden of persuasion to clearly and convincingly show
01:24:40 13 that Chen is prior art.

01:24:42 14 Your Honor, Solas also moves for no anticipation
01:24:47 15 by Chen on an element-by-element basis.

01:24:50 16 The basis of our argument under this motion for
01:24:56 17 judgment as a matter of law is that during his testimony on
01:24:59 18 direct examination, Dr. Sierros admitted in response to
01:25:02 19 questioning from Samsung's counsel no fewer than three
01:25:06 20 separate times, in context of Dr. Sierros's opinions
01:25:11 21 presented -- presented on screen to the jury, that Chen did
01:25:16 22 not anticipate. Chen did not anticipate. It does not
01:25:18 23 anticipate. He does not anticipate.

01:25:21 24 THE COURT: No need to repeat, counsel. I was
01:25:24 25 here.

01:25:25 1 MR. TSUEI: Thank you, Your Honor.

01:25:25 2 For those two reasons and on those two grounds,
01:25:30 3 Solas moves under Rule 50(a) for no invalidity of the '311
01:25:36 4 patent asserted claims based on Chen.

01:25:37 5 And, Your Honor, my colleague, Mr. Udick may have
01:25:42 6 neglected to mention, we are moving for JMOL for no
01:25:46 7 obviousness based on the sole asserted combination, and
01:25:49 8 I'll just briefly explain why.

01:25:50 9 Yesterday, during cross-examination of Samsung's
01:25:53 10 technical expert on this issue, Dr. Sierros admitted he
01:25:56 11 actually did not apply the Court's claim construction to
01:26:00 12 determine where the missing element and the primary
01:26:04 13 reference [7d] was actually found in the Joo reference.
01:26:07 14 And, for the record, that citation is the sealed transcript
01:26:11 15 from Day 4, 147, Lines 23 to 25.

01:26:15 16 Without having actually applied this Court's claim
01:26:22 17 construction of "edge," Dr. Sierros admitted essentially
01:26:25 18 that he actually could not proffer a competent opinion that
01:26:29 19 the references could be combined in a way to meet the
01:26:32 20 limitations of the asserted claims.

01:26:34 21 So for these reasons, Your Honor, Solas believes
01:26:38 22 that Samsung has failed to meet their burden of proving
01:26:42 23 invalidity under either anticipation or obviousness grounds
01:26:45 24 by clear and convincing evidence of the asserted claims of
01:26:49 25 the '311 patent.

01:26:50 1 THE COURT: All right. Thank you.

01:27:00 2 Let me hear competing argument, please.

01:27:04 3 MR. VALENCIA: Good afternoon, Your Honor. Daniel
01:27:06 4 Valencia on behalf of Defendants. I can address the '311
01:27:08 5 patent issues that were just raised. There were two that
01:27:12 6 were raised.

01:27:12 7 One is that Chen isn't prior art. I'll take that
01:27:16 8 one up first, and then I'll talk about the anticipation
01:27:19 9 point.

01:27:19 10 On -- with respect to Chen, there's been a lot of
01:27:23 11 motion practice in this case concerning what is proper
01:27:26 12 evidence of corroboration for invention. And I thought I
01:27:29 13 heard my colleague, Mr. Tsuei, say that there are no
01:27:33 14 factual disputes.

01:27:35 15 There absolutely are factual disputes, and one of
01:27:38 16 the things you'll hear about in discussion of the jury
01:27:41 17 instructions is that we don't think that there's adequate
01:27:45 18 corroboration of the date of invention by -- or the alleged
01:27:48 19 date of invention by Mr. Yilmaz and Mr. Shaikh and others.

01:27:51 20 As a matter of law, inventor testimony -- inventor
01:27:55 21 documents cannot suffice to establish an earlier date of
01:27:59 22 invention than the date Chen was prior art.

01:28:03 23 And so it's our position that the jury should get
01:28:05 24 to consider what they claim is evidence of conception and
01:28:08 25 reduction to practice in light of the cross-examination

01:28:11 1 that was made of Mr. Shaikh, Mr. Yilmaz, and Mr. Credelle.

01:28:15 2 So that's Point 1.

01:28:20 3 On the anticipation argument, I was not in the
01:28:22 4 courtroom, but I understand that during cross-examination,
01:28:29 5 opposing counsel -- sorry, counsel for Solas actually
01:28:31 6 revisited the issue of anticipation and opened the door.

01:28:35 7 And while Mr. -- or, excuse me, Dr. Sierros did
01:28:40 8 testify and did have some difficulties formulating his
01:28:45 9 opinion on anticipation, Mr. Haslam got up and asked him
01:28:48 10 some questions about whether the elements in the claims
01:28:51 11 were satisfied, and he did testify indeed that they were.

01:28:53 12 THE COURT: He did have some difficulty.

01:28:57 13 MR. VALENCIA: Candidly, he did.

01:28:59 14 But we -- it's our position, it's our view, that
01:29:03 15 on redirect examination by Defendants' counsel, we were
01:29:06 16 able to rehabilitate Dr. Sierros and get him to clearly
01:29:13 17 articulate his opinion, which is contrary to the motion
01:29:15 18 that Solas has just made.

01:29:17 19 THE COURT: All right. What else do you have?

01:29:19 20 MR. VALENCIA: I'm going to turn it over to my
01:29:21 21 colleague to handle the third issue.

01:29:24 22 THE COURT: All right.

01:29:31 23 MR. VALENCIA: Thank you.

01:29:32 24 THE COURT: Go ahead, Mr. Cho.

01:29:34 25 MR. DANIEL CHO: Thank you, Your Honor. Daniel

01:29:38 1 Cho on behalf of Defendants.

01:29:39 2 We also argue that Solas has failed to put forward
01:29:42 3 evidence to establish that Chen is not a prior art. We
01:29:42 4 submit, Your Honor, that there was a failure of
01:29:44 5 corroboration, where Solas had burden to prove the
01:29:47 6 invention date based on at least some corroborating
01:29:50 7 evidence that did not come from the inventors.

01:29:54 8 Solas relied on inventor testimony and inventor
01:29:58 9 documents, but Solas failed to corroborate the authorship
01:30:02 10 and date in a manner that is dependent from the inventors.

01:30:05 11 There is also a failure of reduction to practice.
01:30:10 12 There was no evidence that was shown to the jury regarding
01:30:12 13 the prototypes that met the wraparound limitation that's
01:30:15 14 been discussed, no evidence showing any prototype of the
01:30:18 15 wraparound which was successfully made, Your Honor.

01:30:20 16 And for that reason, we submit that there was
01:30:23 17 insufficient evidence put forward to establish Chen is not
01:30:26 18 prior art.

01:30:27 19 THE COURT: Thank you.

01:30:28 20 All right. Let's move on. Let me hear arguments
01:30:32 21 from the competing parties regarding willfulness related to
01:30:38 22 the '311 patent.

01:30:41 23 MR. RUBIN: Your Honor.

01:30:43 24 THE COURT: Yes.

01:30:44 25 MR. RUBIN: There is still -- Neil Rubin for

01:30:45 1 Solas. There is still an issue on invalidity that we
01:30:46 2 haven't addressed. We addressed invalidity for the '311
01:30:52 3 patent, but, as Mr. Tsuei indicated, I'm going to be
01:30:55 4 addressing invalidity for the '450 patent.

01:30:56 5 THE COURT: Well, I thought when you didn't get up
01:30:58 6 and the defense counsel went to the podium, you had decided
01:31:03 7 not to present, but I'll let you do it now.

01:31:07 8 MR. RUBIN: Thank you, Your Honor.

01:31:08 9 THE COURT: Please try to be brief.

01:31:11 10 MR. RUBIN: Thank you, Your Honor.

01:31:13 11 Your Honor, Solas moves for judgment as a matter
01:31:17 12 of law of no invalidity of the '450 patent --

01:31:19 13 THE COURT: Mr. Rubin, I could hear you better if
01:31:23 14 you'd remove your mask just while you're at the podium.
01:31:27 15 Thank you.

01:31:27 16 MR. RUBIN: Thank you, Your Honor.

01:31:27 17 Samsung has failed to present clear and convincing
01:31:30 18 evidence, or any evidence, showing that the sole reference
01:31:31 19 that they rely upon, Utsugi, discloses or renders obvious
01:31:35 20 every element of the '450 patent claims at issue in this
01:31:39 21 trial.

01:31:40 22 Samsung's expert, Dr. Fontecchio, failed to cite
01:31:43 23 any statement or figure in Utsugi that expressly discloses
01:31:47 24 or renders obvious an insulation film formed over said
01:31:52 25 substrate so as to cover both active elements as required

01:31:56 1 by Claim [1c].

01:31:58 2 Relevant testimony from Dr. Fontecchio showing
01:32:00 3 this can be found at yesterday's transcript on Pages 625,
01:32:06 4 Line 15, through 628, Line 23.

01:32:10 5 Dr. Fontecchio also failed to cite any statement
01:32:14 6 or figure in Utsugi that expressly discloses a first
01:32:19 7 electrode connected to both active elements through said at
01:32:23 8 least one contact hole as required by Claim Element [1d],
01:32:30 9 and further failed to present any opinion that this
01:32:32 10 limitation would have been obvious.

01:32:35 11 And relevant testimony on this point is from
01:32:38 12 yesterday, Page 624, Lines 1 through 25, and Page 628,
01:32:46 13 Line 24, through 632, Line 1.

01:32:49 14 As Utsugi is the sole prior art relied upon by
01:32:54 15 Samsung for this '450 patent and as expert testimony is
01:32:58 16 required to establish prior art maps on the claims for the
01:33:03 17 purposes of anticipation or obviousness, no reasonable jury
01:33:07 18 could find that the '450 patent claims are invalid, and
01:33:12 19 Solas is entitled to judgment as a matter of law on this
01:33:14 20 issue.

01:33:14 21 THE COURT: All right. Thank you, counsel.

01:33:22 22 Anything further before we move on to the issue of
01:33:25 23 willfulness?

01:33:26 24 MR. RUBIN: Not on -- or not on invalidity from
01:33:28 25 Plaintiff, Your Honor.

01:33:29 1 THE COURT: All right.

01:33:35 2 MR. AUSTIN: Your Honor, Defendants -- Defendants
01:33:39 3 disagree with my colleague's presentation just now, and we
01:33:43 4 would submit that Defendants have provided clear and
01:33:46 5 convincing evidence that the '450 patent is anticipated or,
01:33:53 6 in the alternative, rendered obvious by Utsugi and that
01:33:57 7 there is no evidence from which a jury could reasonably
01:34:00 8 conclude otherwise.

01:34:03 9 THE COURT: No legally sufficient evidence, I
01:34:05 10 believe the rule says.

01:34:07 11 MR. AUSTIN: Your Honor is correct.

01:34:10 12 THE COURT: All right.

01:34:11 13 MR. AUSTIN: Legally sufficient evidence to
01:34:12 14 conclude otherwise.

01:34:13 15 Your Honor, Dr. Fontecchio, in his direct
01:34:16 16 examination, specifically pinpointed where each and every
01:34:20 17 limitation of this patent is disclosed in Utsugi. We would
01:34:26 18 emphasize that his testimony was unrebutted at trial.

01:34:32 19 With specific respect to the two limitations
01:34:35 20 identified by my colleague, starting with [1c], the
01:34:41 21 insulation layer covering both transistors, Dr. Fontecchio
01:34:46 22 testified that a person of ordinary skill in the art would
01:34:52 23 understand from Utsugi's directive to let grow an
01:34:58 24 insulation layer. After the transistors have already been
01:35:03 25 formed, that the insulation layer would be deposited over

01:35:09 1 the entire surface.

01:35:10 2 And, therefore, even though the selection
01:35:14 3 transistor of Utsugi is not specifically -- expressly shown
01:35:20 4 in Figure 5 nor expressly identified in the corresponding
01:35:30 5 text cited by Dr. Fontecchio during his presentation, a
01:35:33 6 person of ordinary skill in the art would understand that
01:35:38 7 the insulation layer was deposited across the entire
01:35:43 8 surface and only removed over the contact holes, as
01:35:47 9 expressly directed by Utsugi.

01:35:49 10 With respect to Limitation [1d], Your Honor, we --
01:35:59 11 again, the testimony provided by Dr. Fontecchio is
01:36:02 12 un rebutted, and that testimony was that both transistors
01:36:08 13 would be covered by the electrode and connected to that
01:36:13 14 electrode through a contact hole.

01:36:19 15 Your Honor, even if there were reasonable doubt
01:36:22 16 about anticipation of these limitations, we submit that
01:36:27 17 Dr. Fontecchio, again, provided un rebutted testimony that a
01:36:32 18 person of ordinary skill in the art would consider it
01:36:34 19 obvious to deposit -- to keep the layer that has already
01:36:42 20 been -- the insulation layer that has already been
01:36:46 21 deposited over the entire surface and not remove it over
01:36:48 22 the selection transistor.

01:36:53 23 Solas has identified no reason why a person of
01:36:56 24 ordinary skill would be motivated to do so; and, therefore,
01:37:02 25 we would submit that, at a minimum, we've provided clear

01:37:07 1 and convincing evidence of obviousness.

01:37:09 2 THE COURT: All right. Thank you, counsel.

01:37:11 3 I'd like to now hear competing arguments on the
01:37:17 4 issue of willfulness regarding the '311 patent.

01:37:20 5 Let me hear from the Plaintiff first.

01:37:22 6 MR. UDICK: Thank you, Your Honor. Steve Udick
01:37:27 7 for Plaintiffs.

01:37:28 8 Plaintiff Solas moves for JMOL of willfulness of
01:37:32 9 the '311 patent by Defendants Samsung Display Corporation,
01:37:35 10 Samsung Electronics Corporation, and Samsung Electronics
01:37:38 11 America.

01:37:38 12 First, as a predicate matter, willful infringement
01:37:43 13 is proper because the Plaintiff, Solas, has shown, at least
01:37:46 14 through our JMOL on non -- or on infringement, that we've
01:37:51 15 established infringement as a matter of law.

01:37:54 16 We have also established that that infringement
01:37:57 17 has been willful.

01:37:58 18 First, with respect to Samsung Display
01:38:02 19 Corporation, the testimony is unrebutted at trial this week
01:38:05 20 that Samsung Display was aware of the '311 patent, it was
01:38:09 21 aware of the development of the technology that led to --
01:38:13 22 to the '311 patent before it arrived. Within a month of
01:38:18 23 the filing of the '311 patent, Samsung was aware of the
01:38:21 24 issuance of the '311 patent.

01:38:22 25 And to that extent, knowledge and intent going

01:38:26 1 forward is the willful conduct here, as well as the conduct
01:38:32 2 that I'll describe below.

01:38:35 3 But as to Samsung Electronics and Samsung --
01:38:38 4 Samsung Electronics America and Samsung Electronics
01:38:41 5 Corporation, their infringement is willful, as well,
01:38:46 6 because of their reckless disregard for Solas's patent
01:38:49 7 rights shown by the compartmentalization of the entities,
01:38:54 8 their deliberate attempts to avoid the knowledge of each
01:38:57 9 other's -- of the risk associated that other entities may
01:39:01 10 know, particularly where Samsung Display is an
01:39:06 11 80-percent-owned subsidiary of Samsung Electronics
01:39:08 12 Corporation.

01:39:09 13 We've also heard testimony from Mr. Kim that the
01:39:13 14 size of bargaining parties between the entities is at least
01:39:17 15 one reason as to whether or not they take a license.

01:39:21 16 This is not grounded on the issues of whether they
01:39:24 17 use the technology or not, but is a conscious disregard to
01:39:29 18 the technology and a play towards the bargaining position
01:39:32 19 of the parties.

01:39:33 20 And even if that is not met, Samsung Electronics
01:39:36 21 America, Samsung Electronics Corporation, and Samsung
01:39:42 22 Display all are willful infringers, at least because of the
01:39:45 23 post-suit conduct of the '311 patent.

01:39:46 24 First, they continued the pursuit of baseless
01:39:51 25 grounds. Their sole ground for invalidity was presented by

01:39:54 1 an expert witness who -- whose testimony reminded us that
01:39:59 2 sometimes the truth cannot help but escape. And we heard
01:40:03 3 their testimony of what their expert believed the validity
01:40:06 4 of the patent was, and yet they've continued that defense
01:40:10 5 throughout trial. And so --

01:40:12 6 THE COURT: Let me ask you, counsel, in light of
01:40:15 7 the clear guidance from the Supreme Court, and I'm thinking
01:40:18 8 of the Halo case that makes it clear, this is a totality of
01:40:22 9 all the circumstances-type analysis.

01:40:25 10 Are you telling me there's nothing that would push
01:40:28 11 back on the issue of willfulness and all the evidence is
01:40:31 12 clear that it occurred in a willful and egregious manner
01:40:35 13 such to support a grant at this stage under Rule 50(a)?

01:40:40 14 And the Defendants can ask -- can anticipate I'm
01:40:44 15 going to ask them the same question.

01:40:46 16 MR. UDICK: Your Honor, first, with respect to
01:40:51 17 Samsung Display Corporation --

01:40:53 18 THE COURT: You're entitled to make the motion,
01:40:54 19 but the guidance this Court operates under from higher
01:41:00 20 Courts is that I have -- we have to look at everything,
01:41:03 21 everything, not just this discreet area or that discreet
01:41:08 22 area.

01:41:08 23 And discharging that obligation, are you telling
01:41:12 24 me there's nothing that would counter or be taken into
01:41:15 25 consideration in opposition to your position on

01:41:17 1 willfulness?

01:41:19 2 MR. UDICK: I believe there -- there will be
01:41:22 3 evidence that could be offered as a suggestion to the
01:41:25 4 contrary in opposition. We maintain the position, though,
01:41:28 5 that within the totality of the circumstances, JMOL is
01:41:31 6 still appropriate, at least because of the knowing conduct
01:41:39 7 of Samsung Display.

01:41:39 8 THE COURT: Okay. See if you can finish up your
01:41:42 9 argument for me.

01:41:44 10 MR. UDICK: I am finished, Your Honor.

01:41:46 11 THE COURT: All right. Let me hear a response
01:41:47 12 from the Defendants, then.

01:41:48 13 MR. DANIEL CHO: Daniel Cho.

01:41:51 14 THE COURT: I'll ask the same question, counsel.

01:41:53 15 MR. DANIEL CHO: Daniel Cho on behalf of
01:41:54 16 Defendants.

01:41:55 17 Your Honor, we submit that, under the Supreme
01:41:57 18 Court's guidance under Halo, that -- first of all, we
01:42:00 19 disagree with the points made by my colleague there, that
01:42:04 20 our conduct was willful, that Defendants' conduct was
01:42:09 21 willful.

01:42:09 22 The Supreme Court has said in Halo that conduct
01:42:12 23 that rises to the level of wanton, malicious, bad faith,
01:42:15 24 deliberate disregard is the standard. It's a higher burden
01:42:18 25 that the Plaintiff has to show willful infringement. And I

01:42:21 1 can --

01:42:21 2 THE COURT: So let me ask you: Given that I
01:42:23 3 obviously have read Halo and don't need to you recite to me
01:42:28 4 what it says, do you think there's absolutely no evidence
01:42:33 5 that would support a finding of willfulness here such that
01:42:37 6 the totality of everything would support a grant of no
01:42:42 7 willfulness under 50(a)?

01:42:43 8 MR. DANIEL CHO: Yes, Your Honor. We believe that
01:42:45 9 there was --

01:42:45 10 THE COURT: Give me the succinct reasons for it as
01:42:50 11 quickly as you can, then, please.

01:42:51 12 MR. DANIEL CHO: Sure.

01:42:53 13 Your Honor, there was no adequate showing of
01:42:54 14 pre-suit notice. And my colleague talked about the
01:42:58 15 distinct Samsung entities, but there was testimony given by
01:43:02 16 witnesses from Samsung Display and a corporate witness from
01:43:05 17 Samsung Electronics Co. and Samsung Electronics America
01:43:09 18 showing how the corporate entities are distinguishable and
01:43:12 19 they don't have shared knowledge, even within the
01:43:15 20 corporation.

01:43:16 21 And as for SEA, there's no showing of any pre-suit
01:43:20 22 knowledge, other than trying to suggest that SEA, because
01:43:23 23 they're a subsidiary of SEC, would have all the knowledge
01:43:26 24 that SEC has, and that's simply not true given what we've
01:43:31 25 heard in Court.

01:43:32 1 As for SDC, they point to some generalized lists
01:43:36 2 of -- long lists of patents and spreadsheets that identify
01:43:41 3 the patent number for the '311 patent, but there's
01:43:45 4 sufficient caselaw, we submit, that shows long portfolios
01:43:49 5 or lists of patents are legally insufficient to show
01:43:53 6 pre-suit notice.

01:43:54 7 They also pointed to evidence of patents cited in
01:44:04 8 prosecution history or other patent documents that use. As
01:44:07 9 references cited, one of the patents was a '311 patent, and
01:44:11 10 there's, again, caselaw there showing that that does not
01:44:14 11 rise to the level of legally-sufficient showing of pre-suit
01:44:17 12 knowledge.

01:44:18 13 We also submit that the Plaintiff has failed to
01:44:21 14 show egregiousness, which is required for showing willful
01:44:25 15 infringement. There was testimony and evidence shown that
01:44:29 16 Samsung Display, through their business dealings with
01:44:32 17 Atmel, they did not use -- Samsung Display did not use
01:44:37 18 Atmel's confidential information.

01:44:40 19 Samsung Display was innovating its own metal mesh
01:44:44 20 technology that was -- it was an integrated touch sensor,
01:44:49 21 very different from Atmel.

01:44:52 22 In fact, we heard testimony from at least Mr. Kwak
01:44:55 23 who testified that the external metal mesh sensors were
01:44:58 24 unacceptable for use in their products.

01:45:01 25 So for those reasons we submit, Your Honor, that a

01:45:04 1 finding of no willful infringement as a matter of law is
01:45:09 2 appropriate at this stage.

01:45:10 3 THE COURT: Thank you, counsel.

01:45:11 4 Let me hear the parties' competing arguments on
01:45:15 5 damages.

01:45:15 6 We'll begin with the Plaintiff.

01:45:16 7 MS. HENRY: Good afternoon, Your Honor. Claire
01:45:21 8 Henry on behalf of Solas.

01:45:22 9 Solas moves for Rule 50(a) motion on the purpose
01:45:27 10 of damages -- on the subject of damages. We believe we've
01:45:31 11 proven clearly that the appropriate form of damages for the
01:45:35 12 '450 patent is \$25,824,919. For the '338 patent, it's
01:45:42 13 \$27,326,497. And for the '311 patent, it is \$35,412,046.

01:45:54 14 Your Honor, specifically for this, we rely on the
01:45:57 15 testimony of Mr. Dell and his evidence of use -- of
01:46:03 16 Samsung's use of the patents and comparable licenses.
01:46:07 17 PTX-746, 747, PTX-509, and PTX-128 and 522.

01:46:16 18 Mr. Martinez admitted on cross that he had not
01:46:18 19 considered either unit sales or revenues at all in his
01:46:21 20 number, and he also admitted in cross that he believed, and
01:46:24 21 I quote -- excuse me, he believed the purchase prices, and
01:46:28 22 I quote, an absolute ceiling for the damages.

01:46:32 23 We believe he clearly has not applied the proper
01:46:34 24 foundation, and, therefore, the only proper evidence in
01:46:36 25 front of the jury from which any reasonable juror could

01:46:40 1 find is the opinions provided by Mr. Dell.

01:46:43 2 Thank you, Your Honor.

01:46:44 3 THE COURT: Thank you, Ms. Henry.

01:46:45 4 Let me hear the competing arguments from
01:46:47 5 Defendants.

01:46:48 6 MR. DANIEL CHO: Daniel Cho on behalf of
01:46:49 7 Defendants, Your Honor.

01:46:49 8 We believe that Solas has not put forward
01:46:52 9 sufficient evidence of damages to any asserted claim of the
01:46:55 10 asserted patents.

01:46:56 11 And for that reason, we'd move under Rule 50(a)
01:47:01 12 judgment as a matter of law of no damages, or in the
01:47:04 13 alternative, maximum damages of total \$1.65 million.

01:47:08 14 The reasons for that are that Mr. Dell, Solas's
01:47:12 15 damages expert, relied on a number of non-comparable
01:47:17 16 licenses, and Mr. Credelle failed to lay the proper
01:47:21 17 foundation as to the technical comparability for at least
01:47:24 18 the license agreements involving Universal Display.

01:47:28 19 As for the non- -- the license agreement between
01:47:33 20 Atmel and Uni-Pixel, which Mr. Dell testified as somehow
01:47:37 21 being comparable to the hypothetical negotiation for the
01:47:41 22 '311 patent, there was no -- there was insufficient showing
01:47:44 23 of a factual foundation for a technical comparability of
01:47:48 24 any of the patents in the Atmel portfolio to the '311
01:47:54 25 patent that's asserted against the Defendants for, at least

01:47:57 1 the reason that at the time of the license agreement's
01:48:01 2 execution, the '311 patent had not at all been issued.

01:48:04 3 Mr. Martinez provided sufficient testimony,
01:48:09 4 particularly with respect to the Casio/Samsung business
01:48:13 5 relationship, as to why the two hypothetical licensor and
01:48:17 6 the hypothetical licensee would have agreed to a lump sum
01:48:21 7 payment structure for the hypothetical license and also why
01:48:26 8 Atmel and Samsung, with respect to the '311 patent -- '311
01:48:29 9 patent, would have also been a lump sum structure instead
01:48:32 10 of a running royalty.

01:48:33 11 As for the smallest salable patent practicing
01:48:38 12 unit, Your Honor, we have testimony from Mr. Martinez and
01:48:42 13 also Dr. Sierros who talked about why the smallest salable
01:48:48 14 patent practicing unit for the '311 patent cannot be the
01:48:51 15 overall display module, which Samsung Display sells to at
01:48:55 16 least its customer SEC, and why a need to apportion down to
01:49:00 17 the practicing unit, which is the touch sensor.

01:49:02 18 Mr. Dell's cost savings analysis we've shown
01:49:05 19 through our witnesses and the evidence to be unreliable and
01:49:08 20 unsupported by the facts.

01:49:10 21 The comparison that he was drawing was faulty, and
01:49:13 22 we heard Mr. Martinez a few hours ago explaining why the
01:49:17 23 comparison between the external metal mesh touch sensors
01:49:20 24 that were never used in any of the accused products against
01:49:23 25 ITO sensors is not the proper comparison to draw in the

01:49:28 1 cost savings benefit determinations with respect to the
01:49:31 2 '311 patent.

01:49:31 3 And, lastly, Your Honor, on the UDC agreement,
01:49:35 4 Mr. Dell testified that the starting place for the running
01:49:40 5 royalty rate that he drew from the 2005 UDC SDI agreement,
01:49:47 6 which was PTX-509, would be a range of 0.5 to 1.0 percent,
01:49:52 7 and he did -- he testified to some apportionment
01:49:55 8 calculation that he did off of that.

01:49:56 9 But we heard testimony, Your Honor, from Mr. Kim,
01:50:01 10 Samsung Display's witness, who testified that at the
01:50:03 11 relevant time period of the 2005 UDC license, that Samsung
01:50:08 12 Display was only using one -- producing one color using
01:50:12 13 UDC's phosphorescent materials, and, therefore, the
01:50:15 14 applicable royalty rate would have been .5 percent.

01:50:18 15 So Mr. Dell's royalty rate analysis clearly is
01:50:22 16 starting from the wrong starting point.

01:50:25 17 And we submit, Your Honor, that that's not the
01:50:27 18 reliable way to determine reasonable royalty.

01:50:31 19 THE COURT: Thank you, counsel.

01:50:31 20 With regard to the motions offered by both
01:50:36 21 Plaintiff and Defendant for judgment as a matter of law
01:50:38 22 pursuant to Rule 50(a) of the Federal Rules of Civil
01:50:42 23 Procedure, with regard to the issue of infringement versus
01:50:46 24 non-infringement, both literal and indirect, those motions
01:50:50 25 are denied.

01:50:51 1 With regard to the issue of validity or invalidity
01:50:54 2 regarding the '450 patent and the '311 patent, those issues
01:50:58 3 are denied.

01:50:58 4 With regard to the issue of willful infringement
01:51:03 5 concerning the '311 patent, those motions competing are
01:51:08 6 denied.

01:51:08 7 And with regard to the issue of damages raised by
01:51:11 8 both parties in competing fashion, those motions are also
01:51:15 9 denied.

01:51:15 10 This completes practice under Rule 50(a), counsel.

01:51:19 11 I will be back shortly to begin an informal charge
01:51:23 12 conference here in the courtroom.

01:51:24 13 Please advise any of your respective trial teams
01:51:27 14 that aren't present that wish to participate in that
01:51:30 15 process to be here over the next few minutes.

01:51:33 16 In the meantime, the Court stands in recess.

01:51:37 17 COURT SECURITY OFFICER: All rise.

01:51:39 18 (Recess.)

01:51:41 19 (Jury out.)

01:51:41 20 COURT SECURITY OFFICER: All rise.

01:51:42 21 THE COURT: Be seated, please.

04:36:15 22 Mr. Latham, would you bring in the jury, please?

04:36:31 23 COURT SECURITY OFFICER: All rise.

04:36:33 24 THE COURT:

04:36:33 25 (Jury in.)

04:36:36 1 THE COURT: Please be seated.

04:37:08 2 Ladies and gentlemen of the jury, I hope you
04:37:17 3 remember the part when I let you go for lunch where I said
04:37:20 4 this is not an exact science. We have been working
04:37:24 5 diligently ever since you left the courtroom, and I'm not
04:37:28 6 going to go through all the steps that have to be done
04:37:31 7 pursuant to the rules of procedure and the precedent that
04:37:34 8 binds the Court. I'm simply going to say it's taken longer
04:37:39 9 than I thought.

04:37:40 10 There is probably another hour's worth of work
04:37:46 11 before I'm in a position or would be in a position to give
04:37:50 12 you my final instructions and then have counsel for
04:37:53 13 Plaintiff and Defendant present their arguments.

04:37:57 14 Having done this more than once before, I can tell
04:38:01 15 you that when I start giving you my final instructions,
04:38:05 16 from that point until the point where the lawyers are going
04:38:07 17 to finish their arguments and I send you to the jury room
04:38:10 18 to deliberate on your verdict, it's going to be roughly two
04:38:13 19 hours. I'm not going to keep you up here on a Friday
04:38:18 20 evening for that to be done today.

04:38:20 21 I apologize for you being at loose ends since
04:38:28 22 midafternoon until now. I realistically thought we could
04:38:35 23 get there, but despite my best efforts -- and I'm not
04:38:39 24 casting blame. The lawyers have been working with me as
04:38:42 25 diligently as I've been working. There's just a lot to

04:38:46 1 cover. And as I told you early on, this is not a simple
04:38:49 2 case.

04:38:51 3 So all that said, I'm going to release you for the
04:38:53 4 evening. I'll ask you to take your notebooks and leave
04:38:57 5 them closed on the table in the jury room. I'll remind you
04:39:02 6 one more time to follow all the instructions that I've
04:39:05 7 given you about your conduct during the trial, including at
04:39:10 8 the top of that list, not to discuss the case in any way
04:39:14 9 with anyone, including the eight of yourselves.

04:39:17 10 I'm also going to ask you this, I'm going to ask
04:39:21 11 you to leave your homes a little early Monday and be here
04:39:21 12 and be prepared to go at 8:00 o'clock. The rest of us are
04:39:25 13 going to stay up here as long as it takes tonight so that
04:39:27 14 everything is finished and wrapped up with a pretty bow on
04:39:30 15 top, and the only thing I have to do Monday morning is walk
04:39:33 16 up here, look at the -- look at the seven of you and start
04:39:40 17 giving you my final instructions.

04:39:42 18 So if you'll be here Monday so that you can start
04:39:46 19 at 8:00 o'clock, I'll be prepared to start at 8:00 o'clock.
04:39:49 20 And, hopefully, by midmorning, I'll be instructing you to
04:39:53 21 retire and deliberate on your verdict, and we'll have
04:39:56 22 whatever time it takes Monday for that process to be
04:40:01 23 completed.

04:40:02 24 I apologize again. I had hoped that we could get
04:40:05 25 this to you and in your hands today, but despite

04:40:08 1 everybody's best efforts, it's just not practical. And I
04:40:14 2 finally reached a point I don't see any sense keeping you
04:40:16 3 on hold any longer.

04:40:18 4 So with those instruction, you're excused for the
04:40:22 5 evening and the weekend. Please don't forget to come back
04:40:26 6 at 8:00 o'clock Monday morning. And I'll see you at 8:00
04:40:26 7 o'clock. Travel safely.

04:40:32 8 The jury is excused.

04:40:33 9 COURT SECURITY OFFICER: All rise.

04:40:58 10 (Jury out.)

04:40:58 11 THE COURT: All right. Be seated, please.

04:41:00 12 Counsel, I've given both sides in chambers two
04:41:04 13 copies of the final jury instructions and one copy of the
04:41:06 14 verdict form. These are the documents produced after the
04:41:10 15 benefit of the fulsome and informal charge conference I
04:41:15 16 held with you off the record here in the courtroom.

04:41:17 17 I'm going to give you an additional 15 minutes to
04:41:21 18 review those. Then it's my intention to be back on the
04:41:25 19 record and conduct a formal charge conference. And I've
04:41:29 20 already described to you the mechanics of how I anticipate
04:41:33 21 that will be held.

04:41:33 22 Once the final charge conference is complete, then
04:41:37 23 I anticipate releasing you for the weekend, and I will do
04:41:42 24 the document production that needs to be done in my
04:41:46 25 chambers so that Monday morning at 8:00 o'clock we can

04:41:49 1 start.

04:41:49 2 I am hopeful and trusting there won't be
04:41:53 3 demonstrative disputes or other problems with regard to
04:41:56 4 closing arguments that I'll need to hear Monday morning.
04:41:59 5 But if there are, I will be in chambers no later than 7:30.
04:42:03 6 We will get through those in 30 minutes, and we will get
04:42:06 7 started.

04:42:06 8 In that regard, continue to meet and confer as
04:42:11 9 diligently as you have last evening and today, in hopes
04:42:16 10 that that won't be necessary. But if it is, follow all the
04:42:21 11 instructions I've given you about keeping the Court
04:42:24 12 informed on any such possible disputes.

04:42:26 13 I do not -- having just done what I did and having
04:42:30 14 just told the jury what I've told them, we will start at
04:42:33 15 8:00 o'clock Monday morning.

04:42:35 16 All right. Are there questions from Plaintiff?

04:42:37 17 MR. FENSTER: No, Your Honor.

04:42:38 18 THE COURT: Any questions from Defendant?

04:42:41 19 MR. LERNER: No, Your Honor.

04:42:42 20 THE COURT: All right. I'll be back in 15
04:42:44 21 minutes, and we'll conduct a formal charge conference on
04:42:47 22 the record at that time.

04:42:49 23 The Court stands in recess.

04:42:51 24 COURT SECURITY OFFICER: All rise.

04:42:53 25 (Recess.)

05:01:57 1 (Jury out.)

05:02:26 2 COURT SECURITY OFFICER: All rise.

05:02:29 3 THE COURT: Be seated, please.

05:02:31 4 All right. As I mentioned at the time I let the

05:02:42 5 jury recess for the evening and weekend, the Court has

05:02:47 6 conducted this afternoon a fulsome informal charge

05:02:52 7 conference with counsel for all the parties. We've

05:02:56 8 reviewed the current version of the proposed final jury

05:03:02 9 instructions and verdict form, which have gone through

05:03:05 10 several iterations, both before and during the trial.

05:03:10 11 The Court took an opportunity to receive direct

05:03:14 12 and helpful input on an informal basis from various counsel

05:03:18 13 on both sides of the case with regard to those areas in

05:03:23 14 these documents where the parties have a difference of

05:03:28 15 opinion.

05:03:28 16 The Court's considered all that input. The Court

05:03:32 17 has generated a current version of the final jury

05:03:39 18 instructions and verdict form that it believes comports

05:03:42 19 with that input, as well as the law and precedent.

05:03:46 20 The Court has made duplicate copies of those

05:03:50 21 documents available to both sides for an adequate length of

05:03:53 22 time to review and consider the same.

05:03:56 23 And we'll now proceed to hold and conduct a formal

05:03:59 24 charge conference on the record with regard to the final

05:04:02 25 jury instructions and verdict form.

05:04:03 1 As I mentioned earlier to counsel, I believe
05:04:08 2 during the informal charge conference, at this point,
05:04:11 3 during the formal charge conference, I would request that
05:04:15 4 there be a single representative of both sides who will go
05:04:18 5 to the podium, remain at the podium.

05:04:21 6 And as we go through these documents on a
05:04:23 7 page-by-page basis, if there are objections, I will hear
05:04:27 8 them. If not, then I'll get an indication from counsel
05:04:30 9 that there are not any objections, and then we'll move on
05:04:34 10 to the next page.

05:04:35 11 And we will cover these, beginning with the final
05:04:37 12 jury instructions and then moving on to the verdict form,
05:04:40 13 on a page-by-page basis so that we don't overlook anything.

05:04:44 14 So, with that, if counsel for Plaintiff and
05:04:51 15 counsel for Defendants who are going to represent the
05:04:53 16 parties during the formal charge conference will go to the
05:04:55 17 podium, please.

05:04:56 18 All right. We'll begin with the final jury
05:05:02 19 instructions.

05:05:04 20 Let me ask both -- both of you gentlemen, are
05:05:08 21 there objections from either Plaintiff or Defendant to
05:05:11 22 anything on Page 1 of the final jury instructions?

05:05:14 23 MR. UDICK: None from the Plaintiff, Your Honor.

05:05:16 24 MR. LERNER: None from Defendants.

05:05:18 25 THE COURT: Turning then to Page 2, are there

05:05:20 1 objections here from either party?

05:05:22 2 MR. UDICK: None from the Plaintiff.

05:05:23 3 MR. LERNER: Not from Defendants.

05:05:24 4 THE COURT: Page 3, are there objections from
05:05:27 5 either party?

05:05:28 6 MR. UDICK: None from the Plaintiff.

05:05:29 7 MR. LERNER: None from Defendants.

05:05:31 8 THE COURT: Turning to Page 4, are there
05:05:35 9 objections here from either party?

05:05:37 10 MR. UDICK: None from the Plaintiff.

05:05:38 11 MR. LERNER: None from Defendants.

05:05:40 12 THE COURT: Turning then to Page 5, are there
05:05:52 13 objections here from either party?

05:05:57 14 MR. UDICK: None from the Plaintiff.

05:05:58 15 MR. LERNER: Not from the Defendants.

05:05:59 16 THE COURT: Turning then to Page 6, are there
05:06:03 17 objections here from either party?

05:06:06 18 MR. UDICK: Nothing from the Plaintiff.

05:06:07 19 MR. LERNER: None from Defendants.

05:06:10 20 THE COURT: All right. Page 7, are there
05:06:12 21 objections from either party?

05:06:13 22 MR. UDICK: None from the Plaintiff.

05:06:14 23 MR. LERNER: None from Defendants.

05:06:16 24 THE COURT: Turning next to Page 8, are there
05:06:21 25 objections from either party?

05:06:23 1 MR. UDICK: Your Honor, technically objection. We
05:06:24 2 had notice of a typographical error that was certainly a
05:06:31 3 result of the parties here and not the Court's more
05:06:33 4 diligent staff. It is the --

05:06:33 5 THE COURT: Point that out to me, please.

05:06:35 6 MR. UDICK: -- fourth paragraph. It says "the
05:06:37 7 validity of the '388," and it should be the '338.

05:06:41 8 THE COURT: Yes, it should. Thank you. I'll make
05:06:44 9 that typographical correction -- I'll change that
05:06:47 10 typographical correction.

05:06:50 11 Is there anything else from either Plaintiff or
05:06:51 12 Defendant on Page 8 of the final jury instructions?

05:06:51 13 MR. UDICK: Not for the Plaintiff, Your Honor.

05:06:53 14 MR. LERNER: Nothing from Defendants.

05:06:54 15 THE COURT: All right. Next is Page 9, is there
05:06:56 16 objection here from either party?

05:06:57 17 MR. UDICK: Not from the Plaintiff.

05:06:59 18 MR. LERNER: Not from Defendants.

05:07:00 19 THE COURT: Page 10, is there objection from
05:07:03 20 either party?

05:07:04 21 MR. UDICK: No, Your Honor, not from Plaintiff.

05:07:07 22 MR. LERNER: Not from Defendants.

05:07:08 23 THE COURT: Page 11, is there objection from
05:07:11 24 either party?

05:07:12 25 MR. UDICK: Not from the Plaintiff.

05:07:14 1 MR. LERNER: Not from Defendants.

05:07:16 2 THE COURT: Page 12, is there objection from
05:07:19 3 either party?

05:07:20 4 MR. UDICK: None from the Plaintiff.

05:07:21 5 MR. LERNER: None from Defendants.

05:07:23 6 THE COURT: Page 13, is there objection from
05:07:26 7 either party?

05:07:27 8 MR. UDICK: None from the Plaintiff.

05:07:28 9 MR. LERNER: There is an objection from
05:07:30 10 Defendants, Your Honor.

05:07:31 11 THE COURT: Please state your objection.

05:07:32 12 MR. LERNER: In the paragraph with the No. 2 that
05:07:36 13 begins "SDC and SEC took action during the time the
05:07:40 14 asserted patents were in force intending infringing acts by
05:07:44 15 SEA," we're concerned that's not a correct statement of
05:07:47 16 law. We think it needs to be clarified that the intent is
05:07:50 17 to cause infringement, not an intent to cause acts that
05:07:54 18 happen to be infringing.

05:07:56 19 THE COURT: Do you have a proposed modification?
05:08:11 20 Intending to cause infringement by SEA?

05:08:13 21 MR. LERNER: I think that would work, Your Honor.

05:08:15 22 THE COURT: Would Plaintiff have an objection to
05:08:16 23 that modification?

05:08:17 24 MR. UDICK: Your Honor, we would.

05:08:21 25 THE COURT: What would your objection be?

05:08:24 1 MR. UDICK: I believe that's still -- I believe
05:08:26 2 the verb -- the law is correctly stated in 2. It is
05:08:32 3 their -- it is the infringing acts, and the concern here
05:08:35 4 could be among -- if it's just infringement, it might be a
05:08:39 5 product versus infringing acts. It could be an action,
05:08:45 6 importing, for example.

05:08:45 7 THE COURT: Well, the preceding Paragraph 1 says
05:09:01 8 "alleged infringing acts." So that -- 2 is consistent with
05:09:05 9 the use of the word "acts."

05:09:22 10 MR. UDICK: And, Your Honor, the use of the word
05:09:24 11 "acts" carries through that paragraph, as well, so the --
05:09:27 12 yeah.

05:09:28 13 MR. LERNER: Right. The issue is the distinction
05:09:30 14 the law draws between intending to cause something that --
05:09:35 15 intending to cause infringement and intending to cause an
05:09:37 16 action that happens to infringe without intending it to be
05:09:40 17 infringing. And that would be the specific intent
05:09:46 18 requirement for inducement.

05:09:49 19 THE COURT: All right. In light of this
05:09:57 20 discussion, I'm going to change Subparagraph 2 -- or this
05:10:05 21 paragraph marked with 2 in parentheses to read: SDC and
05:10:11 22 SEC took action during the time the asserted patents were
05:10:15 23 in force intending to cause infringing acts by SEA.

05:10:19 24 Is there objection to that from Plaintiff?

05:10:21 25 MR. UDICK: None from the Plaintiff.

05:10:23 1 THE COURT: Is there objection to that from the
05:10:25 2 Defendant?

05:10:25 3 MR. LERNER: Your Honor, I think it still leaves
05:10:28 4 the same ambiguity, unfortunately.

05:10:32 5 THE COURT: I thought you told me, Mr. Lerner,
05:10:34 6 that would be satisfactory. Did I misunderstand you?

05:10:37 7 MR. LERNER: I may not have been articulate.

05:10:40 8 THE COURT: If you were writing it, how would you
05:10:42 9 write it, counsel?

05:10:44 10 MR. LERNER: Took action during the time the
05:10:51 11 asserted patents were in force intending to cause
05:10:53 12 infringement by SEA.

05:11:00 13 THE COURT: So the difference is between intending
05:11:03 14 to cause infringing acts, as opposed to intending to cause
05:11:06 15 infringement?

05:11:07 16 MR. LERNER: It is. And I understand, Your Honor,
05:11:10 17 it's a subtle difference, but I think it would be clearer
05:11:14 18 and more consonant with the legal standard.

05:11:20 19 THE COURT: All right. I'm going to overrule that
05:11:23 20 objection by the Defendant, and I will leave it as stated,
05:11:28 21 which I've modified slightly from the form you have before
05:11:33 22 you now.

05:11:36 23 Again, this portion of paragraph marked 2 on
05:11:40 24 Page 13 will read: SDC and SEC took action during the time
05:11:46 25 the asserted patents were in force intending to cause

05:11:48 1 infringing acts by SEA.

05:11:51 2 Are there other objections on Page 13?

05:11:55 3 MR. LERNER: None from Defendants.

05:11:56 4 MR. UDICK: And none from Plaintiff.

05:11:57 5 THE COURT: All right. Then let's move forward to
05:11:59 6 Page 14. Are there objections here from either party?

05:12:02 7 MR. UDICK: None from the Plaintiff.

05:12:03 8 MR. LERNER: There is one objection from
05:12:05 9 Defendants to the third paragraph. To the inclusion of "if
05:12:14 10 the Defendant acted in reckless disregard of or with
05:12:19 11 deliberate indifference to Solas's patent rights," which we
05:12:22 12 believe does not -- it goes beyond -- it does not impose
05:12:30 13 the requirement for willful infringement. Willful
05:12:32 14 infringement requires more than reckless disregard of or
05:12:38 15 deliberate indifference to patent rights.

05:12:39 16 THE COURT: All right. That objection is
05:12:43 17 overruled.

05:12:44 18 Is there anything further on Page 14?

05:12:47 19 MR. LERNER: No, Your Honor.

05:12:47 20 MR. UDICK: And none from the Plaintiff.

05:12:49 21 THE COURT: Moving then to Page 15, is there
05:12:52 22 objection here from either party?

05:12:54 23 MR. UDICK: None from the Plaintiffs, Your Honor.

05:12:55 24 MR. LERNER: One from Defendants, Your Honor.

05:12:58 25 It's to the omission of an instruction that the jury should

05:13:01 1 consider whether prior art has been presented which was not
05:13:04 2 before the Patent and Trademark Office.

05:13:10 3 THE COURT: It's my understanding that that issue
05:13:13 4 is addressed in these instructions, but if you want to
05:13:17 5 lodge an objection as to Page 15 specifically, that's fine.

05:13:21 6 MR. LERNER: Thank you, Your Honor.

05:13:21 7 THE COURT: That objection is overruled.

05:13:24 8 Anything else on Page 15 from either party?

05:13:26 9 MR. UDICK: None from the Plaintiff.

05:13:28 10 MR. LERNER: Not from Defendants.

05:13:29 11 THE COURT: All right. Next is Page 16. Is there
05:13:32 12 any objection here from either party?

05:13:35 13 MR. UDICK: None from the Plaintiffs.

05:13:36 14 MR. LERNER: Nothing from Defendants.

05:13:37 15 THE COURT: Turning then to Page 17, is there
05:13:40 16 objection here from either party?

05:13:41 17 MR. UDICK: None from the Plaintiff.

05:13:42 18 MR. LERNER: There is an objection from Defendants
05:13:45 19 to the instruction as to the evidence for establishing
05:13:49 20 earlier conception and reduction to practice, and
05:13:54 21 specifically to the instructions not clarifying that the
05:14:01 22 independent corroboration must be documents that are
05:14:04 23 independent of the inventor and not dependent on the
05:14:07 24 inventor's testimony.

05:14:09 25 THE COURT: Can you call the Court's attention to

05:14:11 1 a specific statement or group of words on Page 17 that you
05:14:15 2 believe are flawed in some way?

05:14:18 3 MR. LERNER: I believe it would be in the second
05:14:24 4 full paragraph, the last sentence, "circumstantial evidence
05:14:28 5 of an independent nature, as well as testimony from someone
05:14:31 6 other than the inventors, may also be considered."

05:14:42 7 And then in the next paragraph, the second
05:14:44 8 sentence -- I'm sorry, "in deciding whether the inventor's
05:14:54 9 testimony has been sufficiently corroborated, you must" --
05:14:57 10 I think it's -- it's the circumstantial evidence without
05:15:02 11 the clarification that what's in the independent nature is
05:15:08 12 documents that are not derived from the inventor or based
05:15:10 13 on the inventor's testimony.

05:15:12 14 THE COURT: All right. To the extent I understand
05:15:22 15 your objection, I'm going to overrule it.

05:15:24 16 I believe that the concept of reduction to
05:15:26 17 practice here is adequately addressed by the language
05:15:31 18 included in the Court's instruction.

05:15:33 19 Is there anything further from either party on
05:15:36 20 Page 17?

05:15:38 21 MR. UDICK: None from the Plaintiff.

05:15:39 22 MR. LERNER: Not from Defendants.

05:15:40 23 THE COURT: Then we'll turn to Page 18. Let me
05:15:43 24 ask if there's objection here from either party?

05:15:45 25 MR. UDICK: None from the Plaintiff.

05:15:46 1 MR. LERNER: None from Defendants.

05:15:48 2 THE COURT: Page 19, is there objection from
05:15:51 3 either party?

05:15:52 4 MR. UDICK: None from the Plaintiff.

05:15:53 5 MR. LERNER: None from Defendants.

05:15:54 6 THE COURT: Page 20, is there objection from
05:15:58 7 either party?

05:15:59 8 MR. UDICK: Not from the Plaintiff.

05:16:01 9 MR. LERNER: None from the Defendants.

05:16:03 10 THE COURT: Turning to Page 21, is there objection
05:16:05 11 here from either party?

05:16:07 12 MR. UDICK: None from the Plaintiff.

05:16:08 13 MR. LERNER: None from Defendants.

05:16:09 14 THE COURT: Turning then to Page 22, is there
05:16:12 15 objection here from either party?

05:16:14 16 MR. UDICK: None from the Plaintiff.

05:16:15 17 MR. LERNER: None from Defendants.

05:16:16 18 THE COURT: Turning to Page 23, is there objection
05:16:20 19 from either party?

05:16:21 20 MR. UDICK: None from the Plaintiff.

05:16:22 21 MR. LERNER: None from Defendants.

05:16:24 22 THE COURT: Turning to Page 24, is there objection
05:16:26 23 here from either party?

05:16:28 24 MR. UDICK: None from the Plaintiff.

05:16:29 25 MR. LERNER: None from Defendants.

05:16:32 1 THE COURT: Turning to Page 25, is there objection
05:16:35 2 here from either party?

05:16:36 3 MR. UDICK: None from the Plaintiff.

05:16:37 4 MR. LERNER: There is one from Defendants,
05:16:39 5 Your Honor.

05:16:39 6 THE COURT: State your objection.

05:16:40 7 MR. LERNER: In the last paragraph, it's the
05:16:45 8 non-inclusion of an instruction on the entire market value
05:16:48 9 rule. We believe the evidence has shown that the display
05:16:52 10 module was a commercially-marketed product that itself has
05:16:56 11 multiple components. The accused touch sensors for the
05:17:03 12 '338 patent are a small part of that and, therefore, there
05:17:05 13 should be an instruction on the entire market value rule.

05:17:06 14 THE COURT: That objection is overruled.

05:17:08 15 Anything further on Page 25?

05:17:11 16 MR. LERNER: Not from Defendants.

05:17:12 17 MR. UDICK: Not from Plaintiff, Your Honor.

05:17:13 18 And my colleague just passed up a reference to
05:17:16 19 Page 18 that we just identified, and I don't know how you'd
05:17:19 20 like us to address that.

05:17:21 21 THE COURT: You're asking me to go back to
05:17:25 22 Page 18?

05:17:26 23 MR. UDICK: Unfortunately, yes, Your Honor.

05:17:28 24 THE COURT: Let's finish the process we're
05:17:40 25 involved in now. I don't want to invite both sides to

05:17:43 1 revert to every page in the document. The process will
05:17:47 2 never end. Let's finish where we are, and I'll see if
05:17:51 3 there's anything additional that either side wants to offer
05:17:54 4 or raise.

05:17:55 5 All right. Hearing nothing further with regard to
05:17:57 6 an objection related to anything on or omitted from
05:18:04 7 Page 25, we'll turn to Page 26, and I'll ask if there is
05:18:09 8 objection here from either party.

05:18:10 9 MR. UDICK: None from the Plaintiffs.

05:18:11 10 MR. LERNER: None from the Defendants.

05:18:13 11 THE COURT: Page 27, is there objection?

05:18:17 12 MR. UDICK: None from the Plaintiffs.

05:18:19 13 MR. LERNER: None from Defendants.

05:18:20 14 THE COURT: Page 28, is there objection?

05:18:23 15 MR. UDICK: None from the Plaintiff.

05:18:25 16 MR. LERNER: None from the Defendants.

05:18:27 17 THE COURT: Page 29, is there objection?

05:18:28 18 MR. UDICK: None from the Plaintiff.

05:18:30 19 MR. LERNER: None from the Defendants.

05:18:31 20 THE COURT: Page 30, is there objection?

05:18:33 21 MR. UDICK: None from the Plaintiff.

05:18:35 22 MR. LERNER: None from the Defendants.

05:18:37 23 THE COURT: Page 31, is there objection?

05:18:44 24 MR. UDICK: None from the Plaintiff.

05:18:45 25 MR. LERNER: None from Defendants.

05:18:47 1 THE COURT: Page 32, is there objection?

05:18:49 2 MR. UDICK: None from the Plaintiff.

05:18:50 3 MR. LERNER: None from Defendants.

05:18:54 4 THE COURT: And I have a Page 33 that you may not
05:18:58 5 have, but I will just ask -- your pages end on 33 or 32?

05:19:06 6 MR. UDICK: 33.

05:19:07 7 MR. LERNER: 33.

05:19:08 8 THE COURT: All right. Then let's turn to 33
05:19:10 9 together. Is there any objection here on this last page?

05:19:12 10 MR. UDICK: None from the Plaintiff.

05:19:14 11 MR. LERNER: None from the Defendants.

05:19:16 12 THE COURT: All right. I typically insert into my
05:19:23 13 copy of this a chart where I'm assisted in keeping
05:19:27 14 counsel's time as they present their closing arguments.

05:19:30 15 You don't have that in yours, and that bracketed
05:19:34 16 chart for me to keep the time on sometimes causes the last
05:19:37 17 page or two to be different. That's why I asked that. I'm
05:19:40 18 satisfied we've covered the entirety of the document.

05:19:42 19 Other than whatever it is Plaintiff has alluded to
05:19:47 20 on Page 18, do either of you have any other objections to
05:19:51 21 raise with regard to the final jury instructions?

05:19:54 22 MR. UDICK: No, Your Honor, not for Plaintiffs.

05:19:57 23 MR. LERNER: Not from Defendants.

05:19:58 24 THE COURT: All right. Then out of a desire to be
05:20:03 25 complete and not overlook anything substantive, even though

05:20:07 1 it may not have been timely urged, let's turn back to
05:20:11 2 Page 18, and let me ask Plaintiff what objection they may
05:20:16 3 have here.

05:20:17 4 MR. UDICK: Your Honor, in the fourth paragraph,
05:20:19 5 and within that paragraph the sixth line, the line begins:
05:20:27 6 Been disclosed either stated expressly or implied.

05:20:31 7 We believe the standard there is inherently, and
05:20:34 8 we just ask for a correction from "implied" to
05:20:40 9 "inherently."

05:20:44 10 THE COURT: All right. Anything further?

05:21:00 11 MR. UDICK: No, Your Honor.

05:21:01 12 THE COURT: That objection is overruled.

05:21:03 13 That will complete the final charge conference
05:21:05 14 with regard to the final jury instructions or charge to the
05:21:08 15 jury.

05:21:08 16 Let's turn our attention, counsel, to the verdict
05:21:11 17 form. You have before you, again, what is the most current
05:21:17 18 version of the verdict form with the benefit of the Court
05:21:22 19 taking into account the input received during the informal
05:21:26 20 charge conference.

05:21:27 21 The first page is the style of the case and
05:21:33 22 caption. The second page are definitions. The third page
05:21:36 23 are instructions. The first substantive question doesn't
05:21:41 24 begin until Page 4.

05:21:43 25 Does either Plaintiff or Defendant have any

05:21:45 1 objection to anything regarding Pages 1, 2, or 3?

05:21:50 2 MR. UDICK: None from the Plaintiff, Your Honor.

05:21:52 3 MR. LERNER: Not for Defendants.

05:21:53 4 THE COURT: Then turning to Page 4 where
05:21:55 5 Question 1 is located, is there objection here from either
05:21:58 6 party?

05:21:58 7 MR. UDICK: None from the Plaintiff.

05:21:59 8 MR. LERNER: We do object, Your Honor, to the
05:22:02 9 Question No. 1.

05:22:04 10 THE COURT: State your objection.

05:22:06 11 MR. LERNER: The objection is that it does not
05:22:08 12 distinguish among any of the patents. It does not
05:22:14 13 distinguish among any of the entities. And we believe that
05:22:20 14 both with the -- among the different claims, there are
05:22:25 15 material differences among products that warrant separate
05:22:29 16 questions as to those products.

05:22:32 17 We've provided the Court with a grouping that we
05:22:33 18 would have proposed, which I can restate, but I wouldn't
05:22:38 19 want to if it's unnecessary.

05:22:40 20 THE COURT: Well, as I mentioned during the
05:22:47 21 informal charge conference, Section 281 of the Patent Act
05:22:51 22 makes it clear who is an infringer, not what device may be
05:23:00 23 an infringing device. We have discussed this. I'm aware
05:23:03 24 of the Defendants' position.

05:23:04 25 But your objection to Question 1 on Page 4 of the

05:23:07 1 verdict form is overruled.

05:23:09 2 Let's turn to Page 5 where Question 2 is located
05:23:12 3 regarding the validity/invalidity questions -- or question,
05:23:18 4 rather. Is there objection here from either party?

05:23:20 5 MR. UDICK: None from the Plaintiff, Your Honor.

05:23:22 6 MR. LERNER: None from Defendants.

05:23:23 7 THE COURT: All right. Turning then to Page 6
05:23:25 8 where Question 3 is located regarding willful infringement,
05:23:29 9 is there any objection from either party?

05:23:32 10 MR. UDICK: None from the Plaintiff, Your Honor.

05:23:34 11 MR. LERNER: Defendants do object, Your Honor, to
05:23:38 12 the reference to Samsung as opposed to the individual
05:23:41 13 entities separately.

05:23:43 14 THE COURT: All right. Anything further,
05:23:44 15 Mr. Lerner?

05:23:49 16 MR. LERNER: No, Your Honor, that's it.

05:23:50 17 THE COURT: That objection is overruled.

05:23:51 18 Turn to Page 7, Question 4A is located there. Is
05:23:57 19 there objection here from either party?

05:23:59 20 MR. UDICK: None from the Plaintiffs.

05:24:06 21 THE COURT: Any objection from Defendants?

05:24:08 22 MR. LERNER: Not from Defendants.

05:24:09 23 THE COURT: Turning then to Page 8 where Question
05:24:12 24 4B is located, is there a question -- is there objection
05:24:15 25 from either party here?

05:24:17 1 MR. UDICK: None from the Plaintiff.

05:24:18 2 MR. LERNER: Not from Defendants.

05:24:19 3 THE COURT: All right. Page 9 is the final page
05:24:23 4 calling for the date and signature by the jury foreperson.

05:24:27 5 Is there any objection to the final page, Page 9?

05:24:31 6 MR. UDICK: Not from the Plaintiffs, Your Honor.

05:24:33 7 MR. LERNER: Not from the Defendants.

05:24:34 8 THE COURT: All right. Thank you, counsel. That
05:24:36 9 will complete the formal charge conference with regard to
05:24:40 10 the verdict form, and it will complete the formal charge
05:24:44 11 conference for this case.

05:24:45 12 As I mentioned to you earlier, it's the Court's
05:24:48 13 practice and it's my intention in this case, I'll make the
05:24:52 14 one substantive change that we talked about with regard to
05:24:56 15 the charge, and I will produce seven final copies in
05:25:03 16 written, hard-copy form of the charge, together with one
05:25:09 17 clean copy of the verdict form.

05:25:10 18 And those documents collectively will be given by
05:25:13 19 the court to the Court Security Officer at the time I
05:25:17 20 instruct the jury to retire and deliberate, with the
05:25:20 21 instruction to the Court Security Officer to deliver those
05:25:23 22 items to the jury in the jury room.

05:25:24 23 I will tell the jury as a part of my instructions
05:25:28 24 that they will each receive their own written copy of these
05:25:31 25 instructions. I do that because I want to encourage their

05:25:35 1 most closely directed attention to my verbal instructions
05:25:41 2 and not detract by them feeling compelled to take notes or
05:25:46 3 otherwise do something other than give me their undivided
05:25:49 4 attention.

05:25:49 5 All right. As I indicated earlier, I intend to be
05:25:55 6 ready to go at 8:00 o'clock in the morning.

05:25:57 7 Is there anything either Plaintiff or Defendant is
05:26:00 8 aware of that should be considered by the Court before we
05:26:03 9 recess until that time tomorrow?

05:26:06 10 MR. UDICK: Nothing more from the Plaintiff,
05:26:07 11 Your Honor.

05:26:07 12 MR. LERNER: Nothing from Defendants, Your Honor.

05:26:09 13 THE COURT: All right. Can I get -- if you are --
05:26:13 14 I assume you all know by now, can I get, for my
05:26:17 15 information, a representation of who's going to present
05:26:21 16 closing arguments from each side?

05:26:23 17 MR. FENSTER: Yes, Your Honor. As with opening,
05:26:25 18 the closing will be delivered between myself and Mr. Ward.

05:26:28 19 THE COURT: And you understand you're required to
05:26:30 20 use at least 20 minutes in your first opening?

05:26:33 21 MR. FENSTER: Understood, Your Honor.

05:26:34 22 THE COURT: All right. What about closing
05:26:36 23 arguments for Defendants?

05:26:37 24 MR. LERNER: Mr. Haslam will present closing
05:26:39 25 arguments for Defendants.

05:26:40 1 THE COURT: All right. Thank you, counsel.

05:26:43 2 You are excused until Monday morning. And the
05:26:45 3 Court stands in recess.

05:26:48 4 COURT SECURITY OFFICER: All rise.

05:26:49 5 (Recess.)

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8 CERTIFICATION

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10 I HEREBY CERTIFY that the foregoing is a true and
11 correct transcript from the stenographic notes of the
12 proceedings in the above-entitled matter to the best of my
13 ability.

14

15

16 /S/ Shelly Holmes
17 SHELLEY HOLMES, CSR, TCRR
FEDERAL OFFICIAL REPORTER

3/5/2021
Date

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